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STATE DOCUMENTS

BIENNIAL REPORT
of the
Attorney General
to the Governor
of the
State of Montana
From November 1, 1902, to December 1,
1904

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"INDEPENDENT PUBLISHING COMPANY, HELENA, MONTANA."

STATE OF MONTANA,

ATTORNEY GENERAL'S OFFICE

JAMES DONOVAN,
ATTORNEY GENERAL

F. W. METTLER,
FIRST ASS'T ATTORNEY GENERAL

G. Y. PATTEN,
SECOND ASS'T ATTORNEY GENERAL

Helena, Montana, December 1, 1904.

To his Excellency,

JOSEPH K. TOOLE,

Governor of Montana.

Sir: I have the honor to submit to you my biennial report, as Attorney General of the State of Montana, showing the condition of the affairs of this Department from November 1, 1902, to December 1, 1904.

Stenographer for Attorney General.

Prior to my election to the office in 1900 this office had a stenographer and one assistant. In addition the office of Clerk of the Board of Pardons was filled by a lady stenographer who assisted the regular stenographer of this Department, and the two were kept busy the greater portion of the time. On the recommendation of my predecessor, the office force was increased to two assistants, besides the stenographer; since 1900 there has been but one stenographer in the office. For the first two years of my term there was an appropriation for salary of stenographer of \$1,200 per annum.

In the act creating the offices of First Assistant Attorney General and Second Assistant Attorney General it was provided that the annual salary of the First Assistant should be \$2,000 and of the Second Assistant \$1,800. At the last regular session of the Legislature, for some reason unknown to me, an attempt was made to cut down the force in this office, by cutting off the appropriation for Second Assistant. This recommendation was made in the House, and when the matter went to the Senate the committee on appropriation in the Senate restored the appropriation for Second Assistant, and allowed \$1,200 per annum for salary of the stenographer.

During the last hours of the session some kind of a compromise between the Senate and House committees on appropriations entered into, whereby the salary of the First Assistant Attorney General was reduced to \$1,800, the same as the Second Assistant, and the salary of stenographer was reduced to \$600, while in other Departments of the State Government the lowest salary paid to any stenographer is \$1,200, some receiving as high as \$1,800.

It is well known that the work in this Department has gradually increased from year to year, so that each one in the office is employed all the time. Besides, the work of the stenographer in this Department requires more skill and technical knowledge than in most of the other Departments of the State Government, as the greater part of the work is legal writing, briefs, complaints, answers and other pleadings, and contracts for the different Departments, so that it requires the services of a skilled stenographer in this department. In order to secure the services of one competent to perform these duties such stenographer ought to receive not less than \$1,800 per annum.

In order to meet the conditions arising by virtue of the failure of the legislature to make the proper appropriations for stenographer in this Department, it became necessary, in order to have a stenographer, to use the money appropriated for office expenses to pay the salary of the present stenographer, as far as said appropriations would go. There is now due the present stenographer, James B. Toughill, \$300 for services rendered in this Department. The work done by this stenographer is of as high a class as that done by any stenographer in the State of Montana.

Office Expenses.

The appropriation of \$650 per year for office expenses is altogether too small. There should be appropriated at least \$1,200 per annum for the expense of this office. By reason of the failure of the Legislature to make a proper appropriation for the stenographer in this Department, I have been obliged to turn over for his use the office expense account and to pay out of my own salary such personal expenses as were incurred by me when attending to my official duties outside of the city of Helena, and have not, for nearly two years, presented any claim for personal expenses while attending to my official duties.

First and Second Assistants.

The appropriation for the First Assistant should be at least the amount allowed under the bill creating the office, \$2,000. The salary of the Second Assistant should be allowed to remain at \$1,800. An appropriation should, therefore, be made for these amounts.

Bonds.

During the past four years this department has had submitted to it all of the bonds that have been purchased by the State of Montana in the investment of the Permanent School Fund, and all other funds of the State available for that purpose, and a list of the bonds so passed upon by this office are herewith made a part of this report.

Colbert Will Case.

The Colbert will case that was mentioned in my last biennial report is now pending in the Supreme Court. The appeal that was taken by Woolbeater and Lippencott was dismissed, and the only claim that is now pending against this property is the alleged lost will of Frederick W. Scheuer and Lillian Fluke. This case was presented to the Supreme Court on the 15th of November last and if the appeal is affirmed it will end this case and the property will escheat to the State, provided no heirs appear and claim said property. The value of the property, as is indicated in my last report, is estimated to be \$50,000, and it may greatly exceed that amount.

Costs and Expenses in State Cases.

Section 1878, Code of Civil Procedure, reads as follows: "When the State is a party, and costs are awarded against it, they must be paid out of the State treasury." As I understand the situation the Marshal of the Supreme Court is compelled to serve all processes issued from the Supreme Court, and there is no fund out of which the expense of this service is to be paid. There ought to be, therefore, a special fund of at least \$1,500 provided for this purpose and for the paying of mileage and fees of witnesses and other expenses in State cases, and whatever part of it was not used would revert to the general fund. Through not having an appropriation to meet this condition of affairs, the Marshal is often embarrassed in the service of process, and this department is seriously hampered in the proper care and attention to the interests and property of the State when involved in litigation.

In my last report I called attention to the difficulties attending the prosecution of the Colbert will case, and since that report another illustration has occurred of the evils resulting from such lack of appropriation. In the case of T. B. Story, et al., Plaintiffs, v. W. W. Woolverton, et al., Defendants, State of Montana, Intervenor, pending in the District Court of Gallatin county, and involving a valuable water right connected with the Fort Ellis reservation, which now belongs to the State, a number of witnesses were called to testify on behalf of the State, none of whom have as yet been paid either fees or mileage: yet their testimony was absolutely essential to protect the rights of the State.

Commitments to Insane Asylum.

This office has given attention to all of the institutions and departments of which it is a member, and your attention is especially called to the commitments of persons to the Insane Asylum. There is a printed blank generally used in this State, which has printed upon it a form which when used without modification shows all the persons committed to be indigent persons. This ought to be changed so that the actual financial condition of every person committed to the asylum should be reported to the Board of Commissioners for the Insane. Unless this is done the State will in most instances be paying for the care of patients whose estates are amply able to take care of them. The law ought to compel the clerk of the District Court to send a report to the Attorney General, showing the financial condition of the patient and an inventory of his property, and a guardian should be at once appointed. The State has been saved several thousand dollars by the careful adherence to the law by this department in seeing that all persons who were able to pay for their care in the insane asylum that their estate is utilized for that purpose.

Claims for Maintenance of Insane Persons.

During the past four years there have been a number of claims for maintenance of insane persons placed in the hands of this office by the Board of Commissioners for the Insane for collection, it being the policy of the Board to enforce collection in all cases where any inmate of the State Insane Asylum has any property or estate from which payment can be made. The collection of these claims has been slow on account of the necessity of presenting the claims to the Probate Courts. In some in-

stances it has been necessary for this office to institute proceedings for the appointment of a guardian, and then to take all steps requisite for the sale of the real or personal property of the inmate in order to realize the funds necessary to pay the claims. In no case in which collections have been made has the money passed through this office, but in each case it has been paid directly to the clerk of the Board of Commissioners for the Insane. A schedule is hereto attached showing the claims turned over to this office and all collections made.

Bank Taxation Cases.

I again call your attention to my last biennial report on page 8, with reference to the bank taxation cases. In the city of Butte, owing to the trouble that has arisen there from different factional fights, the banking firms of W. A. Clark & Bro., First National Bank, Daly Bank & Trust Company, State Savings Bank and the Aetna Banking & Trust Company have contested their assessment and have enjoined the county treasurer from collecting these taxes. I have made an investigation and I find that there is due the State of Montana from these banks for the years 1903 and 1904 a total of \$19,452.12, besides county taxes aggregating about \$110,000 more. I sent my First Assistant to Butte recently to examine into the condition of these affairs, and, wherever appeals had been taken, to hasten them along as fast as possible.

The State Savings Bank, which has been the depository of the greater portion of the State funds in the past four years, did not pay its taxes for the year 1903, and it seems that no suit was instituted to enjoin the county treasurer of Silver Bow county from collecting these taxes until I notified the county treasurer that unless the State's portion of these taxes were collected that I would institute a suit against his official bond for the amount due the State. Immediately thereafter suit was instituted against the treasurer enjoining him from collecting these taxes, but no summons or temporary restraining order has ever been served upon him.

It seems to me as though it was a scheme on the part of the bank and the treasurer to prevent the collection of these taxes. The filing of the suit to enjoin the treasurer from collecting these taxes, and the failure to serve summons or injunction order upon the county treasurer seems but a scheme to delay action in the court on this matter.

I now have under investigation the question of the liability of the treasurer for these taxes and if I reach the conclusion that he is liable on his official bond for the amount of taxes due the State from Silver Bow county from these banks, before I retire from office I shall institute a suit against the county treasurer of Silver Bow county to collect these taxes.

The law ought to be amended with reference to the collection of taxes whereby the banks be enjoined from doing business if they failed to pay their taxes within thirty days after they become due.

The contentions in most of these instances arise from what is known as the surplus of the banks. Many banks transfer large amounts of money to their surplus and undivided profits account and then endeavor to avoid payment of taxes on the surplus and undivided profits.

The law as it is at present taxes only the stock of the bank, and the value of the stock is ascertained by the Assessors. Now, where a bank carries undivided profits and surplus accounts, this surplus and undivided profits belong to the stockholders of the bank, and the value of each share of stock in the bank is enhanced by the size of the surplus and undivided profits.

Much difficulty has arisen in determining how the surplus and undivided profits should be taxed. The way this surplus is taxed, as the law is at the present time, is by adding the amount of the surplus to the stock and then raising the assessment on the stock; because if there is an unpaid dividend the share of stock that draws that dividend is worth more before the dividend is paid than it is after. The law ought to be changed so as to tax the surplus and undivided profits separately. In this way much of the difficulty now met could be dispensed with.

Insurance Companies.

In the matter of the insurance companies, there ought to be an insurance board in this State, provided with a clerk, which clerk should be a lawyer and invested with power to examine witnesses under oath, and every insurance company doing business within this State ought to be subjected to a rigid examination before a license is issued to it, and the report made by the insurance clerk should be referred to the Board, with all evidence and showing made before him. In this way fake insurance companies could be kept out of the State and prevented from

doing business and not permitted to enter the State to be discovered after they have perpetrated frauds on the people of the State.

Assessment and Taxation.

The whole scheme of taxation should be carefully examined and modified so that a more equitable assessment could be made throughout the State. For instance: As the law is at present only such property as is owned on the first Monday in March is subject to taxation, and many merchants of this State order large bills of goods in January and February to be delivered the latter part of March and carry a large stock throughout the year. Thus avoiding taxation, because this stock was not on hand on the first Monday in March, but is on hand during every other Monday in the year. The most important matter to the people of the State of Montana is correct laws for the taxation of property so that each may bear the burden proportionately.

Delinquent State Taxes.

The law ought to be changed in reference to delinquent taxes in this respect: That wherever a county treasurer has failed to collect all of the taxes due, that portion that belongs to the State for State purposes should be paid by each county, whether the county collects it or not. The State ought not to depend for its money to run the State Government upon the ability of the county treasurer to collect the taxes. Whatever money is due the State from the several counties of the State should be paid immediately after a definite date. If this was done the county treasurers would be more vigilant in the collection of the taxes than they are at the present time, and in no instance should the State be obliged to wait until the delinquent taxes are collected before it receives all that is due from the counties.

After the assessments have been made, and the amount of said taxes fixed, and the assessment of the amount made against each county, this ought to be an indebtedness of the county to the State and paid by the counties without regard to whether the county has been able to collect the taxes or not. Because it is a rare instance, where taxes have been assessed against the property and vigilance exercised in the collection of the same, that there is any failure to receive the amount so assessed.

State Board of Equalization.

The State Board of Equalization ought to be invested with

absolute power over the county boards of equalization, but under the law as it now stands the State Board of Equalization is divested of any power except to assess the railroads. A constitutional amendment ought to be submitted to the people giving the Board of Equalization control over the county boards of equalization.

Constitutional Amendments.

On the 25th day of October, 1904, a telegram was sent from this office to each county clerk in the State reading as follows: "I have discovered in the constitutional amendment proposed at the coming election that it should be printed in a particular manner upon the ballot, and desire to have you hold the printing of the ballot until you can receive a letter from me of this date with proper instructions as to how to print the ballot." This was followed up on the same date by a circular letter to each clerk reading in part as follows:

"In examining the constitutional amendment to be submitted to the electors of Montana at the coming election, I have discovered that in its present form it cannot be submitted without subjecting it to the hazard of being declared by the court improperly adopted and of becoming of no force and effect. I therefore call your attention to the fact that there are two subjects of amendment to the constitution, one is to prohibit the employment of children under the age of 16 years in underground mines, the other to declare eight hours a day's work in certain lines of employment. These are two separate and distinct subjects, and, under the decisions of the several courts of the Union, should be submitted as two separate and distinct amendments, rather than as one single amendment.

There is, however, another matter, contained in section 5, which provides that the legislature shall by appropriate legislation provide for the enforcement of the provisions of this Article. This the legislature has done, without any special submission to the people.

The two questions are the prohibition of the employment of children under 16 years of age in underground mines and the eight hour proposition. To have these properly submitted to the electors so that they may be

acted upon in a way that will be approved by the court, if the amendments are ever attacked, they must conform to section 9, of Article XIX, of the constitution. As these two propositions cover separate subjects they cannot be construed as one amendment. I therefore suggest to you that in order to have these matters properly on the ballot that there be printed upon the ballot the following:" (Here followed the form to be printed on the ballot, designated "Amendment No. 1" and "Amendment No. 2.")

The county clerks were instructed to strictly comply with the suggestions contained in said letter, and for the most part the instructions were complied with.

In order to test the question, and have it passed upon by the Supreme Court a suit was instituted at the instigation of the Democratic State Central Committee against the County Clerk and Recorder of Lewis and Clarke county, to compel him to print upon the official ballot the form prescribed by the legislature in the act providing for the submission of the amendments. In its opinion dismissing the case the Supreme Court sustained the position of this office, holding that if the amendment had been submitted to the voters in the form prescribed by the legislature, section 9 of Article XIX, of the Constitution would have been violated, and the vote upon the amendments would have been ineffectual for any purpose. In the form in which the amendments were finally voted upon, they were carried by a very large majority.

Reports of County Attorneys.

I respectfully call your attention to the reports of the different County Attorneys of the State attached to this report, with reference to the enforcement of the criminal laws of this State, an examination of which will show that the present corps of County Attorneys throughout the State of Montana have performed their duties in an efficient and earnest manner. The State is to be congratulated that it has had as County Attorneys of the several counties of the State efficient, painstaking and competent officers. There has been no complaint worthy of note made against any of these officers to this department.

The law ought to be changed so as to define the duties and relations of the several County Attorneys to this department.

The Supreme Court of this State has clearly indicated that the Attorney General has a supervisory control over the County Attorneys within the State, but there ought to be some definite legislation along this line so that wherever it becomes necessary for the Attorney General of the State to direct a County Attorney to do certain things, or to refrain from doing certain things, which in the judgment of the Attorney General should be done or not done, that these orders could be properly enforced by some summary process.

So far as this office is concerned, there never has been any conflict between any of the County Attorneys of this State and this department, but there might arise occasions when it would become necessary for the Attorney General to take charge of certain cases and direct the County Attorneys to act within certain lines. If such an occasion should arise, as the law now stands, and the County Attorney should refuse to obey the orders of the Attorney General, it might occasion the necessity of calling upon the Supreme Court to define the duties of the County Attorney, as well as the duties of the Attorney General, which duties ought to be clearly expressed in statutory provisions. If this is done there could then be no conflict between this department and that of any County Attorney within the State.

Deposit of State Funds.

The law in regard to the depositing of the State funds ought to be changed so that the funds of the State should always be safely deposited. This could be done by having a law enacted that would prohibit the State Treasurer from depositing more than \$75,000 in any one bank in this State, and that when so deposited the State should receive interest on the same on daily balances: and the provisions of section 14 of Article XII, of the Constitution, which prohibits any State officer from making any profit out of the funds of the State, should be supplemented by statutory provisions to give life and effect to said section of the Constitution, making it a penal offense for the State Treasurer to receive interest on public funds.

Interest on State Funds.

If any interest at all is to be paid on public funds, the interest belongs to the State just as much as the principal and should go into the public treasury. At every change of administration there is a scramble among the different banks of the State to

secure a deposit of the public funds of the State.

The State Board of Examiners should be authorized to advertise for bids for the deposit of the public funds, and those funds, or portions of funds, that cannot be invested in bonds should be deposited with the highest bidder. In this way the State will always be receiving interest on whatever money it has on hand and the deposits will be safe and secure at all times.

Court Cases Disposed Of.

I desire to particularly call your attention to the large number of court cases disposed of during the last two years, being a total of 61, as against 38, shown by my last biennial report. Of this number there were 52 cases in the Supreme Court, in 26 of which the result was favorable to this Department, and in 26 unfavorable. There were 7 cases in various District Courts, of which the State lost 3 and won 4; also one case in the United States Circuit Court of the Ninth District, and one case in the Supreme Court of the United States, in both of which the State was successful.

Court Cases Pending.

There are at the present time only five cases pending in the Supreme Court, and about the same number in various District Courts, as against a total of 37 cases pending and undetermined two years ago. So that it may be said that the docket of court cases of this Department is practically clear.

Opinions.

There have been rendered during the past two years 175 official opinions, not, however, counting opinions given upon the validity and legality of various bond issues heretofore mentioned, the purchase of which was contemplated by the State. In some of the investigations of these issues defects were discovered in the proceedings necessitating new elections, which were accordingly advised. The list of bonds mentioned in Schedule D includes none of the issues as to which adverse opinions were rendered by this Department.

Schedules.

I append hereto as a part of this report Schedules as follows:

Schedule A: List of cases finally disposed of in which the State of Montana was a party, or in which the Attorney General was attorney or of counsel, from November 1, 1902, to December 1, 1904.

Schedule B: List of cases pending on December 1, 1904, in which the State of Montana is a party, or in which the Attorney General is attorney or of counsel.

Schedule C: Statement showing expense account of Department of Attorney General from November 1, 1902, to December 1, 1904.

Schedule D: Statement of Bonds and Securities purchased by State, January 7, 1901, to December 1, 1904, the legality and validity of issue of which were examined and approved by this Department.

Schedule E: Statement of claims for maintenance of insane persons at State Insane Asylum placed in hands of this Department for collection, and amounts collected.

Schedule F: Copies of reports of County Attorneys for period of time from November 1, 1902, to December 1, 1904.

Schedule G: Synopsis of opinions rendered by Attorney General from November 1, 1902, to December 1, 1904.

Respectfully submitted,

JAMES DONOVAN,

Attorney General.

SCHEDULE A.

List of Cases Finally Disposed of in Which the State
of Montana was a Party, or in Which the Attorney
General was Attorney or of Counsel, from
November 1, 1902, to December 1, 1904.

SCHEDULE A.

List of Cases Finally Disposed of in Which the State of Montana was a Party, or in Which the Attorney General was Attorney or of Counsel, from November 1, 1902, to December 1, 1904.

No. 1577.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

Western Ranches, Limited,	}	C. R. Middleton and Clayberg and Gunn,
Appellant,		
v.	}	Attorneys for Appellant.
County of Custer,		
Respondent.	}	C. B. Nolan, Atty. Gen'l., Attorney for Respondent.

Opinion rendered June 1, 1903, reversing judgment of lower court.

No. 1578.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

Matador Land & Cattle Company,	}	C. R. Middleton and Clayberg and Gunn,
Appellant,		
v.	}	Attorneys for Appellant.
County of Custer,		
Respondent.	}	C. B. Nolan, Atty. Gen'l., Attorney for Respondent.

Opinion rendered June 1, 1903, reversing judgment of lower court.

No. 1605.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

John A. Featherman, et al.,	}	Toole, Bach & Toole, Attorneys for Respondent.
Respondent.		
v.	}	H. W. Rogers, Durfee & Brown and C. B. Nolan, Attorneys for Appellant.
Granite County, Montana,		
Appellant.	}	

Opinion rendered August 14, 1903. Case dismissed.

No. 1626.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State Publishing Company,	C. B. Nolan, Atty. Gen'l.,
Appellant,	Attorney for Appellant,
	so far as the interests of the State
	are concerned.
v.	H. J. Burleigh,
	Attorney for Appellant.

John S. M. Neill,	Carpenter & Carpenter,
Respondent.	Attorneys for Respondent.

June 18, 1903, dismissed upon motion of Appellant.

No. 1681.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

Timothy Murray,	A. P. Stark,
Appellant,	Attorney for Appellant.
v.	

Alex Livingston, Treasurer of	James Donovan, Atty. Gen'l.,
Park County, Montana,	Attorney for Respondent.
Respondent.	

October 15, 1903, motion to dismiss. Sustained.

No. 1689.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

Walsh & Walsh,	Blackford & Blackford,
Appellants,	Attorneys for Appellant.
v.	

James M. Croft, County Treas-	James Donovan, Atty. Gen'l.,
urer Fergus County,	Attorney for Respondent.
Respondent.	

Opinion rendered January 31, 1903, reversing judgment of lower court.

No. 1712.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana,
Respondent,) James Donovan, Atty. Gen'l.,
Attorney for Respondent.

v.

Frank Connors, alias E. J. Wade,
Appellant,) Raymond M. Place,
Attorney for Appellant.

Opinion rendered November 24, 1902, affirming judgment of lower court.

No. 1743.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana, ex rel. T. J. Porter, as County Attorney,
Appellant,) J. H. Johnston, County Attorney,
and James Donovan, Attorney General.

v.

Western Ranches, Limited,
Respondent,) Clayberg & Gunn,
Attorneys for Appellant.
Attorneys for Respondent.

October 6, 1903, dismissed, each party to pay its own costs.

No. 1746.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana,
Respondent,) Peter Breen and James Donovan,
Attorneys for Respondent.

v.

Charles Anderson,
Appellant,) John N. Kirk and E. J. Dierks,
Attorneys for Appellant.

December 9, 1903, filed motion to dismiss. Sustained. Appeal dismissed.

No. 1749.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana, Respondent,) James Donovan, Atty. Gen'l.,
Attorney for Respondent.

v.

Archie Burrell, Appellant,) J. A. Largent, and Cullen, Day &
Cullen,
Attorneys for Appellant.

December 22, 1902, opinion rendered affirming judgment of lower court.

January 4, 1903, Writ of Error to Supreme Court of United States.
August 13, 1904, Mandate of Supreme Court of United States affirming opinion of Supreme Court of Montana.

No. 1760.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana, Respondent,) James Donovan, Atty. Gen'l.,
Attorney for Respondent.

v.

Dennis C. Courtney, as Administrator of the Estate of Thomas F. Courtney, Deceased, Appellant,) McHatton & Cotter,
Attorneys for Appellant.

January 21, 1903, opinion modifying judgment.

No. 1797.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana, ex rel. James Donovan, Relator,) James Donovan, Atty. Gen'l.,
Attorney for Relator.

v.

District Court of the Seventh Judicial District of the State of Montana, et al., Respondents,) Clayberg & Gunn and Sydney Sanner,
Attorneys for Respondent.

September 28, 1903, stipulation dismissing proceedings for Writ of Review. October 6, 1903, Dismissed.

No. 1802.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana,	Appellant,	James Donovan, Atty. Gen'l., Attorney for Appellant.
v.		
Rocky Mountain Bell Telephone Co., a Corporation,	Respondent,	H. G. & S. H. McIntire, Attorneys for Respondent.

Opinion rendered January 29, 1903, reversing judgment of lower court.

No. 1807.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana,	Appellant,	James Donovan, Atty. Gen'l., Attorney for Appellant.
v.		
Northern Pacific Express Co.,	Respondent,	Wm. Wallace, Jr., Attorney for Respondent.

February 7, 1903. Opinion rendered affirming judgment of lower court.

No. 1818.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana,	Respondent,	James Donovan, Atty. Gen'l., Attorney for Respondent.
v.		
Llwellyn Felker,	Appellant,	McHatton & Cotter and Lewis A. Smith, Attorneys for Appellant.

March 6, 1903, Opinion rendered giving Defendant a new trial.

No. 1819.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana,	Appellant.	James Donovan, Atty. Gen'l., Attorney for Appellant.
v.		
Board of County Commissioners of Madison County,	Respondent.	M. M. Duncan, County Attorney, Attorney for Respondent.

February 11, 1904, Appeal dismissed.

No. 1832.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana,	Respondent.	James Donovan, Atty. Gen'l., Attorney for Respondent.
v.		
William Broadbent & James Don- aldson,	Appellants.	Wm. Wallace, Jr., O. F. Goddard and Sydney Sanner, Attorneys for Appellants.

January 2, 1903, Opinion rendered reversing judgment of lower court.

No. 1842.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana,	Respondent.	James Donovan, Atty. Gen'l., Attorney for Respondent.
v.		
George A. McDonald,	Appellant.	L. J. Hamilton and B. S. Thresh- er, Attorneys for Appellant.

December 1, 1902, Opinion rendered affirming judgment and order overruling motion for new trial of District Court.

No. 1846.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana, Respondent,) James Donovan, Atty. Gen'l.,
Attorney for Respondent.

v.

Camile Peres, Appellant,) T. E. Brady,
Attorney for Appellant.

January 15, 1903. Opinion affirming judgment of lower court.

No. 1848.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana, Appellant,) James Donovan, Atty. Gen'l.,
Attorney for Appellant.

v.

George A. McDonald and Jerry McMahon, Respondents,) B. S. Thresher and J. L. Wines,
Attorneys for Respondents.

November 28, 1902. Appeal dismissed on motion of Attorney General.

No. 1849.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana, Respondent,) James Donovan, Atty. Gen'l.,
Attorney for Respondent.

v.

Percy DeWolfe, Appellant,) J. W. Freeman,
Attorney for Appellant.

January 23, 1903. Opinion rendered reversing judgment of lower court.

No. 1855.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

The Mutual Life Insurance Com- pany, of New York,	)	Toole & Bach,
Respondent.		Attorneys for Respondent.

v.

Charles H. Martien, as Assessor,	)	James Donovan, Atty. Gen'l.,
Appellant.		Attorney for Appellant.

February 13, 1903. Opinion rendered affirming judgment of lower court.

No. 1858.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana,	)	James Donovan, Atty. Gen'l.,
Respondent,		Attorney for Respondent.

v.

Thomas Tighe,	)	J. E. Kanouse and Nolan & Loeb.
Appellant.		Attorneys for Appellant.

January 2, 1903. Opinion rendered reversing judgment of lower court.

No. 1878.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

The State of Montana, ex rel.	)	James Donovan, Atty. Gen'l.,
James Donovan, Attorney Gen- eral,		Attorney for Relator.
Relator.		

v.

J. F. Ledwidge, etc.,	)	Jesse B. Roote,
Respondent.		Attorney for Respondent.

November 3, 1902. Opinion. Permanent Writ issued.

No. 1879.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana,	Respondent,	James Donovan, Atty. Gen'l., Attorney for Respondent.
v.		
Wm. E. Hardee,	Appellant.	George E. Hurd, Attorney for Appellant.

April 11, 1903. Opinion affirming judgment of lower court.

No. 1887.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana,	Respondent,	James Donovan, Atty. Gen'l., Attorney for Respondent.
v.		
James Martin, et al.,	Appellants.	T. A. Morrin, Attorney for Appellant.

December 21, 1903. Opinion affirming judgment of lower court.

No. 1888.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana,	Respondent,	James Donovan, Atty. Gen'l., Attorney for Respondent.
v.		
N. P. Lagoni and Wm. F. Stuft,	Appellants.	M. D. Baldwin and Sidney M. Logan, Attorneys for Appellant.

June 3, 1903. Opinion reversing judgment of lower court. June 11, 1903. Issued Remittitur.

No. 1912.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana,	Respondent,	James Donovan, Atty. Gen'l., Attorney for Respondent.
v.		
Charles Lennox,	Appellant,	J. Bruce Kremer and George H. Busch, Attorneys for Appellant.

Appeal dismissed on account of escape of Defendant.

No. 1921.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

Northwestern Mutual Life Ins. Co.,	Respondent,	Clayberg & Gunn, Attorneys for Respondent.
v.		
County of Lewis and Clarke,	Appellant,	James Donovan, Atty. Gen'l., Attorney for Appellant.

October 16, 1903, Opinion modifying judgment.

No. 1934.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana,	Appellant,	James Donovan, Atty. Gen'l., Attorney for Appellant.
v.		
Felix Landry,	Respondent,	Nolan & Loeb, Attorneys for Respondent.

December 4, 1903, Opinion affirming judgment of lower court.

No. 1938.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

John Hehl,

Plaintiff,

v.

Robert B. Smith, Edward Horsky
and E. A. Carleton,
Attorneys for Plaintiff.

W. W. Welch, et al.,

Defendants.

James Donovan, Atty. Gen'l.,
Attorney for Defendants.

April 23, 1903. Plaintiff granted leave to withdraw complaint.

No. 1941.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

Charles H. Snell,

Plaintiff,

v.

Robert B. Smith, E. A. Carleton
and Edward Horsky,
Attorneys for Plaintiff.

W. W. Welch, et al.,

Defendants.

James Donovan, Atty. Gen'l.,
Attorney for Defendants.

April 27, 1903. Opinion application dismissed.

No. 1946.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana,

Respondent,

v.

James Donovan, Atty. Gen'l.,
Attorney for Respondent.

Louis H. Mott,

Appellant.

Woody & Woody,
Attorneys for Appellant.

December 23, 1903. Opinion affirming judgment of lower court.

No. 1960.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana,	)	James Donovan, Atty. Gen'l.,
Respondent,		Attorney for Respondent.

v.

Robert Stickney,	)	Downing & Stephenson,
Appellant,		Attorneys for Appellant.

June 25, 1903, Motion to dismiss. Sustained.

No. 1978.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana,	)	James Donovan, Atty. Gen'l.,
Appellant,		Attorney for Appellant.

v.

B. J. Mjelde,	)	Sidney Fox,
Respondent,		Attorney for Respondent.

February 1, 1904, Opinion reversing judgment of lower court.

No. 1989.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana,	)	James Donovan, Atty. Gen'l.,
Respondent,		Attorney for Respondent.

v.

Wilton G. Brown,	)	Henry Thompson,
Appellant,		Attorney for Appellant.

November 30, 1903, Opinion reversing judgment of lower court.

No. 1992.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana,	)	James Donovan, Atty. Gen'l.,
Respondent,		Attorney for Respondent.

v.

George Howard, alias Joseph	)	Alex Mackel and William Meyer,
Howard, alias Joe Kirby,		
Appellant.		Attorneys for Appellant.

January 18, 1904. Opinion affirming judgment of lower court.

No. 1993.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana,	)	James Donovan, Atty. Gen'l.,
Respondent,		Attorney for Respondent

v.

James S. Keerl,	)	T. J. Walsh and C. B. Nolan,
Appellant.		
		Attorneys for Appellant.

February 1, 1904. Opinion reversing judgment of lower court.

No. 1995.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

T. B. Story, et al.,	)	Luce & Luce,
Plaintiffs,		Attorneys for Plaintiffs.
	)	Hartman & Hartman,
v.		Attorneys for Defendants,
		(except Lawrence) and Inter-
W. W. Woolverton, et als.,	)	venor, Angie Reynolds.
Defendants.		James Donovan, Atty. Gen'l.,
Angie Reynolds, Intervenor.	)	Attorney for Intervenor, State
State of Montana, Intervenor.		of Montana.

December 1, 1904. Opinion affirming judgment of lower court.

No. 2003.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana, Respondent,) James Donovan, Atty. Gen'l.,
Attorney for Respondent.

v.

Robert Stickney, Appellant,) Downing & Stephenson,
Attorneys for Appellant.

Second Appeal.

February 8, 1904. Opinion affirming judgment of lower court.

No. 2004.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana, Respondent,) James Donovan, Atty. Gen'l.,
Attorney for Respondent.

v.

L. McKinney, Appellant,) Nolan & Loeb,
Attorneys for Appellant.

January 23, 1904. Opinion affirming judgment of lower court.

No. 2015.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

In the Matter of the Estate of Robert B. Smith, Jesse B. Roote
Charles Colbert, Deceased,) and W. C. Jones,
John Woolbeater, Appellant,) Attorneys for Appellant.

v.

State of Montana, Respondent,) James Donovan, Atty. Gen'l., and
C. F. Kelley,
Attorneys for Respondent

December 24, 1903. Motion to dismiss sustained. Appeal dismissed.

No. 2039.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana,	Respondent,)	James Donovan, Atty. Gen'l.,
		Attorney for Respondent.
v.		
Joe Rogers,	Appellant,)	Alex. Mackel and William Meyer,
		Attorneys for Appellant.

June 22, 1904, Opinion reversing judgment of lower court.

No. 2048.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana ex rel., James	Plaintiff,)	James Donovan, Atty. Gen'l.,
Donovan,		Attorney for Plaintiff.
v.		
A. H. Barret, State Treasurer,	Defendant,)	Carpenter, Day & Carpenter,
		Attorneys for Defendant.

April 6, 1904, Opinion, proceedings dismissed.

No. 2054.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana,	Respondent,)	James Donovan, Atty. Gen'l.,
		Attorney for Respondent.
v.		
John Tully,	Appellant,)	E. E. Hershey,
		Attorney for Appellant.

December 1, 1904, Opinion reversing judgment of lower court.

No. 2068.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana, ex rel., James Donovan,	}	James Donovan, Atty. Gen'l., Attorney for Plaintiff.
Plaintiff.		
v.		
T. A. Williams,	}	
Defendant.		

May 10, 1904, Application denied.

No. 2076.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana, ex rel., Wyman Ellis, et al.,	}	M. S. Gunn, Attorney for Relator.
Relator.		
v.		
J. H. Calderhead, State Auditor,	}	James Donovan, Atty. Gen'l., Attorney for Respondent.
Respondent.		

June 18, 1904, Proceeding dismissed.

No. 2079.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana, ex rel., James Donovan,	}	James Donovan, Atty. Gen'l., Attorney for Relator.
Relator.		
v.		
District Court of the First Ju- dicial District, et al.,	}	T. J. Walsh and C. B. Nolan, Attorneys for Respondents.
Respondent.		

June 22, 1904, Order to show cause dismissed.

No. 2083.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana, ex rel., James Donovan,)
 Plaintiff,)
 v.)
 James Donovan, Atty. Gen'l.,
 Attorney for Plaintiff.

District Court of the First Ju-)
 dicial District, et al.,)
 Defendants,)
 T. J. Walsh and C. B. Nolan,
 Attorneys for Defendants.

June 24, 1904. Petition denied. Proceedings dismissed.

No. 2113.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana, ex rel., John T. Athey,)
 Relator,)
 v.)
 H. G. McIntyre, H. N. Blake and
 M. S. Gunn,
 Attorneys for Relator.

Geo. M. Hays, Secretary of State)
 of the State of Montana,)
 Defendant,)
 James Donovan, Atty. Gen'l.,
 Attorney for Defendant.

October 17, 1904. Writ of injunction ordered to issue.

No. 2114.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana, ex rel., A. J. Galen,)
 Relator,)
 v.)
 H. G. McIntyre, H. N. Blake and
 M. S. Gunn,
 Attorneys for Relator.

Geo. M. Hays, Secretary of State)
 of the State of Montana,)
 Respondent,)
 James Donovan, Atty. Gen'l., R.
 B. Smith, A. I. Loeb and J. M.
 Denny,
 Attorneys for Respondent.

October 26, 1904. Opinion, peremptory writ ordered to issue.

No. 2118.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana, ex rel., Thomas	Nolan & Loeb,	Attorneys for Relator
C. Kurtz,		
	Relator,	
v.		
Sidney Miller, as County Clerk	James Donovan, Atty. Gen'l.	Attorney for Respondent.
and Recorder of Lewis and		
Clarke County,	Respondent.	

November 1, 1904. Motion to quash sustained.

IN THE DISTRICT COURT OF THE TENTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF FERGUS.

State of Montana,	Plaintiff,	James Donovan, Atty. Gen'l., and O. W. Belden, County Atty. Attorneys for Plaintiff.
v.		
Ralph Pulitzer,	Defendant.	Nolan & Loeb, Attorneys for Defendant.

Defendant fined \$500.

No. 75.

IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF TETON.

State of Montana,	Plaintiff,	James Donovan, Atty. Gen'l., and J. E. Erickson, County Atty., Attorneys for Plaintiff.
v.		
Ralph Pulitzer,	Defendant.	Nolan & Loeb, Attorneys for Defendant.

Defendant fined \$500.

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH
JUDICIAL CIRCUIT, IN AND FOR THE DISTRICT OF
MONTANA.

Butte & Boston Consolidated Mining Company,	Complainant,	} James Donovan, Atty. Gen'l., Attorney for Petitioner.
v.		
John F. Forbis, Executor, etc... et als.,	Defendants.	
F. Augustus Heinze, Administra- tor, etc., and Clara A. Larkin, Cross-Complainants,		
v.		
Butte & Boston Consolidated Mining Company, et als.,	Defendants.	

Order made requiring taxes to be paid.

No. 218.

IN THE SUPREME COURT OF THE UNITED STATES.

Archie Burrell,	Appellant,	} Cullen, Day & Cullen, Attorneys for Appellant.
v.		
State of Montana,	Respondent,	} James Donovan, Atty. Gen'l., Attorney for Respondent.

May 31, 1904. Mandate of Supreme Court of United States affirm-
ing judgment of Supreme Court of Montana.

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNY OF GALLATIN.

W. H. Lee, et al.,	Plaintiffs,	Luce & Luce, Attorneys for Plaintiffs.
v.		
W. W. Woolverton, et al.,	Defendants.	Hartman & Hartman, Attorneys for Defendants (except Lawrence) and Intervenor, Angie Reynolds.
Angie Reynolds, Intervenor. State of Montana, Intervenor.		
		James Donovan, Atty. Gen'l., Attorney for State of Montana.

Appealed to Supreme Court October 22, 1903, and opinion rendered affirming judgment of lower court.

No. 4939.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF LEWIS AND CLARKE.

John S. M. Neill,	Plaintiff,	Carpenter & Carpenter, Attorneys for Plaintiff.
v.		
T. W. Poindexter, State Auditor of the State of Montana,	Defendant.	C. B. Nolan, Atty. Gen'l., and H. J. Burleigh, Attorneys for State Publishing Company.

October 27, 1900. Appealed to Supreme Court.

June 18, 1903. Dismissed upon motion of State Publishing Company.

No. 5266.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF LEWIS AND CLARKE.

State of Montana,	Plaintiff,	O. W. McConnell, County Atty., and James Donovan, Attorney General,
v.		
Rocky Mountain Bell Telephone Company, a Corporation,	Defendant,	H. G. and S. H. McIntire, Attorneys for Defendant.

Attorneys for Plaintiff.

April 2, 1902, Appealed to Supreme Court.

February 12, 1903, Opinion reversing judgment of lower court.

No. 5297.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF LEWIS AND CLARKE.

State of Montana, ex rel., William L. Steele, County Treasurer of Lewis and Clarke Co.,	Plaintiff,	O. W. McConnell, County Atty., and James Donovan, Attorney General,

Attorneys for Plaintiff.

v.

Northern Pacific Express Com- pany,	Defendant,	Wm. Wallace, Jr., Attorney for Defendant.

April 7, 1902, Appealed to Supreme Court.

February 7, 1903, Opinion affirming judgment of lower court.

No. 696.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF LEWIS AND CLARKE.

State of Montana,	Plaintiff,	James Donovan, Atty. Gen'l., and Lincoln Working, County Atty., Attorneys for Plaintiff.
v.		
S. R. King,	Defendant,	Nolan & Loeb, Attorneys for Defendant.

April 17, 1903, Information dismissed.

April 22, 1903, Appealed to Supreme Court..

Judgment affirmed.

SCHEDULE B.

List of cases pending on December 1, 1904, in which the
State of Montana is a party, or in which the
Attorney General is attorney
or of counsel.

SCHEDULE B.

List of Cases Pending on December 1, 1904, in Which the State of Montana is a Party, or in Which the Attorney General is Attorney or of Counsel.

No. 1737.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana, ex rel., James Donovan, Attorney General, Relator.	)	James Donovan, Atty. Gen'l., Attorney for Relator.
v.		
C. L. Brown, C. R. Noble and A. M. Baird, County Commission- ers of Dawson County, State of Montana, Respondents.	)	H. J. Haskell and T. C. Holmes, Attorneys for Respondent.

Hearing continued until further order of court, Nov. 11, 1901.

No. 2000.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

In the Matter of the Estate of Charles Colbert, Deceased. Frederick W. Scheuer, Appellant.	)	John J. McHatton and O. J. Sa- ville, Attorneys for Appellants.
v.		
State of Montana and John Wool- beater, Respondents.	)	James Donovan, Atty. Gen'l., and C. F. Kelley, Jesse B. Roote, Robert B. Smith and W. C. Jones, Attorneys for Respondents.

Argued and submitted on November 15, 1904.

No. 2073.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana, Respondent,	)	James Donovan, Atty. Gen'l., Attorney for Respondent.
v.		
George Hliboka, Appellant.	)	A. P. McAnelly, Attorney for Appellant.

November 19, 1904. Argued and submitted.

No. 2085.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana, ex rel., Wm. D. C. F. Kelley,
Clark, Relator,) Attorney for Relator.
v.

The District Court of the Second Peter Breen,
Judicial District and Hon. E.) Attorney for Respondents.
W. Harney, Judge thereof,)
Respondents. James Donovan, amicus curiae.

October 29, 1904. Argued and submitted.

November 3, 1903. Brief of Respondent.

No. 2099.

IN THE SUPREME COURT OF THE STATE OF MONTANA.

State of Montana, Respondent,) James Donovan, Atty. Gen'l.,
Attorney for Respondent.
v.

A. O. Jones, Appellant,) Hartman & Hartman and John A.
Luce, Attorneys for Appellant.

August 24, 1904. Filed transcript.

September 27, 1904. Appellant granted until January 1, 1905, to file brief.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF MONTANA, IN AND FOR
THE COUNTY OF MISSOULA.

Alex Big Knife, Plaintiff,) Harry Parsons,
Attorney for Plaintiff.
v.

Arthur Higgins, Defendant,) James Donovan, Atty. Gen'l., and
Charles H. Hall, County Atty.,
Attorneys for Defendant.

Pending in District Court.

No. 5529.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF LEWIS AND CLARKE.

Missouri River Power Company,	}	Toole & Bach,
Plaintiff,		Attorneys for Plaintiff.
v.	}	
W. L. Steele, Treasurer of Lewis and Clarke County,		James Donovan, Atty. Gen'l., and Lincoln Working, County Atty.,
Defendant.		Attorneys for Defendant.

Still pending in District Court.

In the Matter of the Guardianship of Patrick Ferguson, An Insane person.	}	James Donovan, Atty. Gen'l.,
		Attorney for the State.
	}	

Pending.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF LEWIS AND CLARKE.

In the Matter of the Petition of William B. Pomeroy, Heir-at-Law of Thomas M. Pomeroy, Deceased.	}	James Donovan, Atty. Gen'l.,
		Attorney for the State.
	}	
		Toole & Bach,
		Attorneys for Petitioner.

Demurrer to Answer overruled November 19, 1904, and judgment ordered for petitioner.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF JEFFERSON.

In the Matter of the Estate and	)	James Donovan, Atty. Gen'l.,
Guardianship of Eliza Sebey,		Attorney for Petitioner.
An Insane person.		

Pending.

No. 5288.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF LEWIS AND CLARKE.

W. S. Nichol,	)	Geo. H. Stanton,
Plaintiff and Appellant.		Attorney for Plaintiff and Appellant.
v.		
Board of Medical Examiners of the State of Montana,	)	James Donovan, Atty. Gen'l.,
Defendant and Respondent.		Attorney for Respondent.

November 11, 1901, Appeal filed.

November 25, 1901, Petition to practice pending appeal taken under advisement.

IN THE DISTRICT COURT OF THE TENTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF FERGUS.

State of Montana,	)	James Donovan, Atty. Gen'l.,
Plaintiff,		Attorney for Plaintiff.
v.		
Board of County Commissioners of Fergus County, State of Montana,	)	O. W. Belden, County Attorney,
Defendant.		Attorney for Defendant.

Pending in District Court on Agreed Statement of Facts and Brief of Attorney General on behalf of Plaintiff.

No. 295.

IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL
DISTRICT OF THE STATE OF MONTANA, IN AND FOR
THE COUNTY OF TETON.

State of Montana,

Plaintiff,

James Donovan, Atty. Gen'l.,
Attorney for Plaintiff.

v.

Teton County,

Defendant.

James Sulgrove, County Atty.,
Attorney for Defendant.

October 7, 1901, Filed Transcript on Appeal from action of County
Commissioners on refusal to allow claim filed.

March 10, 1902, Continued for term.

March 29, 1902, Filed Plaintiffs's Brief.

SCHEDULE C.

Statement Showing Expense Account of Department of
Attorney General from November 1, 1902
to December 1, 1904.

SCHEDULE C.

Statement Showing Expense Account of Department of Attorney General from November 1, 1902, to December 1, 1904.

Narrative of Warrant	Date	In Favor of	Amount	Account of
1903				
36572 Mar.	19	F. W. Mettler	\$11 00	Exp. Colbert Will
36524 Mar.	11	State Pub. Co.	8 75	Supplies
*36551 Mar.	11	Lawyers Co.-Op. Pub. Co.	14 00	2 copies Gen. Digest
36552 Mar.	11	James Donovan	6 50	Exp. to Bozeman
36553 Mar.	11	G. Y. Patten	1 00	P. O. Box Rent.....
36558 Mar.	11	R. M. Bell Tel. Co.....	6 00	Toll
36999 Apr.	30	State Pub. Co.	14 80	Supplies
36999 Apr.	30	State Pub. Co.	80	Supplies
36993 Apr.	21	W. U. Tel. Co.	1 10	Messages.....
36995 Apr.	21	G. Y. Patten	6 55	Exp. to Bozeman
37009 Apr.	21	F. W. Mettler	12 50	Exp. Colbert Will
37010 Apr.	21	James Donovan	18 35	Exp. to Butte
37011 Apr.	12	Thornton Hotel Co.	34 55	Exp. Colbert Will
37012 Apr.	21	West Pub. Co.	8 00	70 and 71 Pac. Rep.
37036 Apr.	21	R. M. Bell Tel. Co.	6 00	Toll
37583 May	19	Independent Pub. Co. ..	10 90	2c Envelopes.....
37598 May	19	W. U. Tel. Co.	13 05	Telegrams.....
37604 May	19	F. W. Mettler	10 75	Exp. to Billings.....
37605 May	19	G. Y. Patten	3 55	Exp. to Bozeman
37602 May	19	R. M. Bell Tel. Co.	43	Toll
37864 June	16	State Pub. Co.	11 55	Supplies
37885 June	16	Lawyers Co.-Op. Pub. Co.	7 60	General Digest
37896 June	16	R. M. Bell Tel. Co.	6 00	Services
38138 July	21	F. W. Mettler	12 70	Exp. to Kalispell.....
38139 July	21	Patten, G. Y.	1 00	P. O. Box rent
38149 July	21	R. L. Polk & Co.	5 00	Directory
38152 July	21	State Pub. Co.	5 10	Supplies
38360 July	21	Independent Pub. Co....	10 60	2c Envelopes
38764 Aug.	18	F. W. Mettler	6 70	Traveling expenses
38744 Aug.	25	N. N. Davidson	1 40	Notarial Fee.....
39000 Sept.	22	R. M. Bell Tel. Co.	6 00	Services.....
39080 Sept.	30	State Pub. Co.	8 60	Supplies
39089 Sept.	30	N. N. Davidson	10 60	Postage stamps
39122 Oct.	17	State Pub. Co.	10	Typewriter Oil
39126 Oct.	17	West Pub. Co.	8 00	Pacific Reporter
39127 Oct.	17	F. W. Mettler	1 00	P. O. Box rent
39314 Oct.	28	N. N. Davidson	2 20	1c wrappers.....
1904				
40553 Dec.	22	F. W. Mettler	7 20	Exp. Colbert Will.....
40557 Dec.	21	Independent Pub. Co. ..	10 60	Printing
40555 Dec.	22	State Pub. Co.	12 35	Supplies
40560 Dec.	22	R. M. Bell Tel. Co.	7 33	Services
40875 Jan.	22	Independent Pub. Co. ..	51 20	Printing, etc.
40896 Jan.	22	G. Y. Patten	1 00	P. O. Box rent
40897 Jan.	22	J. C. & C. W. Currah..	1 50	Opening Desk
40924 Jan.	28	N. N. Davidson	10 00	Postage stamps
41294 Feb.	16	F. W. Mettler	6 70	Exp. Colbert Will
41308 Feb.	16	R. M. Bell Tel. Co.	6 75	Service
41312 Feb.	16	State Pub. Co.	14 83	Supplies
41333 Mar.	31	Jas. B. Toughill	100 00	Feb. Salary as Stenographer.....
41339 Mar.	31	Independent Pub. Co.	21 20	Envelopes, etc.
41392 Mar.	31	Jas. B. Toughill	100 00	Mar. Salary as Stenographer..
41761 Apr.	12	Jas. B. Toughill	100 00	Jan. Salary as Stenographer..
41827 Apr.	19	State Pub. Co.	29 25	Supplies

Number of Warrant	Date	In Favor of	Amount	Account of
41821	Apr.	19 F. W. Mettler	1 00	P. O. Box rent
42406	May	16 R. M. Bell Tel. Co.	6 00	Service
42407	May	19 Jas. B. Toughill	100 00	April Salary as Stenographer..
42406	May	31 Jas. B. Toughill	100 00	May Salary as Stenographer ..
42718	June	21 State Pub. Co.	1 50	Supplies
42801	June	21 Jas. B. Toughill	100 00	June Salary as Stenographer ..
42719	July	19 G. Y. Patten	11 70	Exp. to Red Lodge
43015	July	19 G. Y. Patten	1 00	P. O. Box rent
43051	July	19 R. L. Polk & Co.	5 00	Directory
43075	July	30 Jas. B. Toughill	100 00	July Salary as Stenographer ..
43078	Aug.	8 N. N. Davidson	2 00	Postage stamps
43103	Aug.	16 State Pub. Co.	8 45	Supplies
43385	Aug.	31 Jas. B. Toughill	100 00	Aug. Salary as Stenographer ..
43596	Sept.	20 R. M. Bell Tel. Co.	6 00	Services
43754	Oct.	18 G. Y. Patten	1 00	P. O. Box rent
43764	Oct.	18 State Pub. Co.	5 00	Supplies ..
.....	Nov.	30 N. N. Davidson	10 00	Postage stamps
		Total	\$1,300 09	
		By refund on warrant No. 36551	7 00	
			\$1,293 09	

* One book returned.

SCHEDULE D.

Statement of Bonds and Securities Purchased by State,
January 7, 1901, to December 1, 1904, the Legal-
ity and Validity of Issue of Which Were
Examined and Approved by
this Department.

SCHEDULE D.

Statement of Bonds and Securities Purchased by State, January
7, 1901, to December 1, 1904, the Legality and Validity
of Issue of Which Were Examined and
Approved by this Department.

- Cascade County Funding Bonds, Nos. 1 to 100 inc., \$1000 each, issued July 1, 1901; Life, 20 years; interest, $3\frac{1}{2}$ per cent; interest payments, January and July 1. Amount, \$100,000.
- Missoula County, School District No. 1, Refunding Gold Bonds, Nos. 1 to 45, inc., \$1000 each; issued January 1, 1902; Life, 20 years (optional after 5 years); interest payments January and July 1; interest, 4 per cent. Amount, \$45,000.
- Gallatin County Refunding Bonds, Nos. 1 to 30, inc., \$1000 each; issued October 1, 1901; Life, 20 years (redeemable after 10 years); interest payments, January and July 1; interest, 4 per cent. Amount, \$30,000.
- Cascade County School District No. 20, No. 1; issued October 1, 1901. Life, 10 years (redeemable after 5 years); interest payments, April and October 1; interest, 6 per cent. Amount \$600.
- Park County School District No. 25, Nos. 1 and 2 for \$500 and \$700; issued December 20, 1901; Life, 20 years; interest payments, May and December 20; interest, 6 per cent. Amount, \$1200.
- Carbon County School District No. 41, No. 1; issued February 15, 1902; Life, 10 years (redeemable after 5 years); interest payments, February and August 15; interest 6 per cent. Amount, \$800.
- Carbon County School District No. 22, No. 1; issued January 1, 1902; Life, 10 years (redeemable after 5 years); interest payments, January and July 1; interest, 6 per cent. Amount \$900.
- Carbon County School District No. 34, Bond No. 1; issued January 1, 1902; Life, 5 years; interest payments, January and July 1; interest 6 per cent. Amount, \$474.
- Teton County School District No. 8, Bond No. 1; issued November 1, 1901; Life, 10 years; interest payments, May and November 1; interest, 6 per cent. Amount, \$800.
- Cascade County District No. 47, Bond No. 1; issued October 1, 1901; Life, 10 years; interest payments, April and October 1; interest, 6 per cent. Amount, \$700.

Lewis & Clarke County School District No. 11; issued January 1, 1902; Life, 10 years; interest payments, January and July 1; interest, 6 per cent. Amount, \$700.

Fergus County School District No. 24, Bonds Nos. 1 to 9, inc., for \$500 each; issued December 20, 1901; Life, 20 years (redeemable after 10 years); interest payments, June and December 20; interest, 6 per cent. Amount, \$4500.

Yellowstone County School District No. 23, Bonds Nos. 1, 2 and 4, for \$500 each, No. 3 for \$600; issued April 1, 1902; Life, 10 years (redeemable after 5 years); interest payments, April and October 1; interest, 6 per cent. Amount, \$2100.

Park County School District No. 26, Bond No. 1; issued March 15, 1902; Life, 5 years; interest payments, March and September 15; interest, 6 per cent. Amount, \$500.

Chouteau County School District No. 13, Bonds Nos. 1, 2 and 3, \$500 each; issued April 1, 1902; Life, 5 years; interest payments, April and October 1; interest 6 per cent. Amount, \$1500.

Ravalli County School District No. 20, Bonds Nos. 1 to 6, inc., \$100 each; issued July 19, 1902; Life, 18 months; interest payments, January 1; interest, 6 per cent. Amount, \$600.

Carbon and Sweet Grass Counties, School Districts Nos. 39 and 31, Bond No. 1; issued August 1, 1902; Life, 10 years; interest payments, August and December 1; interest, 6 per cent. Amount, \$700.

Sweet Grass County School District No. 17, Bonds Nos. 1 and 2, \$500 each; issued November 15, 1902; Life, 15 years (redeemable after 10 years); interest payments, November and May 15; interest, 6 per cent. Amount, \$1000.

Flathead County Court House and Jail, Bonds Nos. 1 to 110, \$500 each; issued May 31, 1902; Life, 20 years; interest payments, July and January; interest, 4 per cent. Amount, \$55,000.

Carbon County School District No. 23, Bonds Nos. 1 and 2, \$500 each; issued May 1, 1903; Life, 10 years (redeemable after 5 years); interest payments, May and November; interest, 5 per cent. Amount, \$1000.

Meagher County School District No. 16, Bonds Nos. 1 to 15, inc., \$100 each; issued June 15, 1903; Life, 10 years (redeemable after 6 years); interest payments, June 15; interest, 5 per cent. Amount, \$1500.

- Yellowstone County School District No. 10, Bonds Nos. 1 and 2, \$800 each; issued April 7, 1903; Life, 10 years; interest payments, April 7; interest, 5 per cent. Amount, \$1200.
- State Normal School Bonds, Nos. 1 to 25, inc., \$1000 each; issued May 1, 1903; Life, 20 years (redeemable after 10 years); interest payments, May and November 1; interest, 3 per cent. Amount, \$25,000.
- City of Dillon Water Bonds, Nos. 1 to 65, inc., \$1000 each; issued July 1, 1903; Life, 20 years (redeemable after 10 years); interest payments, July and January 1; interest, 5 per cent. Amount, \$65,000.
- Fergus County High School Bonds, Nos. 1 to 30, inc., \$1000 each; issued July 1, 1903; Life, 20 years; interest payments, January and July 1; interest $4\frac{1}{2}$ per cent. Amount, \$30,000.
- Chouteau County School District No. 16, Bonds Nos. 1 to 10, inc., \$1000; issued July 1, 1903; Life, 20 years; interest payments January and July 1; interest $4\frac{1}{2}$ per cent. Amount, \$10,000.
- Yellowstone County School District No. 2; Bonds Nos. 1 to 25, inc., \$1000 each; issued July 1, 1903; Life, 20 years (redeemable after 10 years); interest payments, January and July 1; interest, 4 per cent. Amount, \$25,000.
- Missonla County School District No. 1, Bonds Nos. 1 to 10, inc., \$1000 each; issued September 26, 1903; Life, 20 years (redeemable 10 years after date); interest payments, January and July 1; interest, 4 per cent. Amount, \$10,000.
- Valley County School District No. 5, Bonds Nos. 1 to 15, inc., \$1000 each; issued June 15, 1903; Life, one redeemable each year; interest payments, June 15; interest, 5 per cent. Amount, \$15,000.
- City of Great Falls Refunding Bonds, Bonds Nos. 1 to 141, inc., \$1000 each; issued July 1, 1903; Life, 20 years (redeemable after 10 years); interest payments, July and January 1; interest, 4 per cent. Amount, \$141,000.
- Broadwater County School District No. 15, Bonds Nos. 1 to 3, \$500 each; issued December 1, 1902; Life, 20 years; interest payments, December 1; interest, 5 per cent. Amount, \$1500.
- Fergus County School District No. 43, Bond No. 1; issued October 10, 1904; Life, 5 years; interest payments, October 10; interest, 6 per cent. Amount, \$500.

SCHEDULE E.

Statement of Claims for Maintenance of Insane Persons
at State Insane Asylum Placed in Hands of this
Department for collection, and
Accounts Collected.

SCHEDULE E.

**Statement of Claims for Maintenance of Insane Persons at State
Insane Asylum Placed in Hands of this Department for
Collection, and Amounts Collected.**

Name of Inmate	County from which sent	Amount Claim	Collected
Nels. Hansen	Lewis and Clark	\$121 45	\$..
Albert D. Johnson	Lewis and Clark	455 00	150 80
Eliza Sobey	Jefferson	744 25	121 25
Alice Hodges	Missoula	628 55	.....
Wesley Rhodes	Broadwater	60 45	.....
Patrick Ferguson	Beaverhead	1,939 75	.....
Martin Holmberg	Silver Bow	85 80	.....
Reese Powell	Ravalli	11 70	.....
John Galena	Silver Bow	1,269 45	.....
Glen Smart	Gallatin	2,318 55	.....
Totals .....	.....	\$7,634 95	\$1,016 50

Remarks:—In the case of the claim against the Estate of Patrick Ferguson, which is one of the largest claims referred to us, repeated efforts have been made to collect the money from his estate, but without success. In all cases, claims have been presented to the administrator or guardian, and many letters have been written regarding the claims to the county attorneys of the respective counties, it being impracticable for any member of this office to spare the time or incur the expense necessary to give personal attention to the claims. The results have been very unsatisfactory, as it has seemed all but impossible to get the administrators or guardians to take any action whatever upon the claims. In all of the above cases in which collections have not been made, claims are pending in the courts of the respective counties, no action having been taken upon same, or there being no funds with which to pay same. A total of a little over one thousand dollars has been collected, all of which was turned over to either the Clerk of the Board of Commissioners for the Insane, or the State Treasurer.

SCHEDULE F.

Copies of reports of County Attorneys for period of time
from November 1, 1092, to December 1, 1904.

SCHEDULE F.

Copies of Reports of County Attorneys for Period of Time from November 1, 1902, to December 1, 1904.

Report of C. W. Robinson, County Attorney of the County of Beaverhead, Montana, as to cases pending and tried in the District Court of Beaverhead County for the period of time from Nov. 1, 1902, to Dec. 1, 1904.

Crime	No. of Informations	Convictions, ..	Acquittals, ...	Cases Pending	Cases Continued	Dismissals ...
Arson	*1	0	0	0	0	0
Assault	6	2	1	2	0	1
Burglary	4	3	0	0	0	1
Forgery	**5	3	0	1	0	0
Gambling	1	0	0	1	0	0
Grand Larceny	***16	5	1	6	0	2
Murder	1	0	0	0	0	0
Manslaughter	0	1	0	0	0	0
Perjury	****1	0	0	0	0	1
Misdemeanors	3	0	0	3	0	0
Robbery	(a) 1	0	0	0	0	0
Total	39	14	2	13	0	5
	Won.		Lost.		Pending.	
Civil Cases	2		0		2	

Remarks:—* Sheriff's office report unable to locate defendant.

** Sheriff's office report that defendant could not be located.

*** Two cases defendants bonds were forfeited and collected. One defendant had three charges of horse stealing against him, being convicted on two; the third was dismissed. Sheriff's office report unable to locate one defendant.

**** Cases taken up in Federal Court before dismissal.

(a) Two defendants in case and both escaped jail.

The reason so many cases are pending is that May and November terms are jury terms and the Judge of this District failed to appear to open the November term and ordered the Clerk to Discharge the Jury and vacate the term.

I have been County Attorney since January 6, 1903.

Report of John A. Mathews, County Attorney of the County of Broadwater, Montana, as to cases pending and tried in the District Court for period of time from Nov. 1, 1902, to Dec. 1, 1904.

Crime	No. of Informations	Convictions, ..	Acquittals	Cases Pending	Cases Continued	Dismissals
Assault, 2nd degree	1	1	0	0	0	0
Burglary	2	0	1	1	0	0
Forgery	0	0	0	0	0	0
Gambling	0	0	0	0	0	0
Grand Larceny	2	1	1	0	0	0
Habeas Corpus	0	0	0	0	0	0
Murder	0	0	0	0	0	0
Manslaughter	1	1	0	0	0	0
Misdemeanor	1	1	0	0	0	0
Perjury	0	0	0	0	0	0
Rape	0	0	0	0	0	0
Branding calf with intent to steal	1	1	0	0	0	0
Cruelty to animals (appeal from J. P. Court)	1	1	0	0	0	0
Total	9	6	2	1	0	0
Civil Cases—None.						

Remarks:—Burglary case pending;; information filed by predecessor; defendant escaped from county jail Nov. 5, 1902, no trace since found; ex-sheriff and present sheriff used all due diligence to trace prisoner.

Report of L. O. Caswell, County Attorney of the County of Carbon, Montana, as to cases pending and tried in District Court for period of time from Nov. 1, 1902, to Dec. 1, 1904.

Crime	No. of Informations	Convictions, ..	Acquittals	Cases Pending	Cases Continued	Dismissals
Assault	4	1	2	1	0	3
Burglary	2	2	0	0	0	1
Forgery	2	2	0	0	0	0
Gambling	0	0	0	0	0	0
Grand Larceny	5	2	1	3	0	2
Habeas Corpus	1	0	1	0	0	0
Murder	1	1	0	0	0	0
Manslaughter	0	0	0	0	0	0
Misdemeanor	2	2	0	0	0	0
Perjury	0	0	0	0	0	0
Rape	1	0	0	0	0	1
Robbery	5	3	0	0	0	2
Violating Game Law	0	0	0	0	0	0
Total	30	13	4	4	0	9
Remarks	Won. 13		Lost. 4		Pending. 4	

Report of R. W. Berry, County Attorney of the County of Cascade, Montana, as to cases pending and tried in the District Court for period of time from Nov. 1, 1902, to Dec. 1, 1904.

Crime	No. of Informa- tions	Convictions...	Acquittals....	Cases Pending	Cases Con- tinned	Dismissals ...
Assault	4	4	1	1	0	1
Burglary	13	8	0	2	0	3
Forgery	5	3	0	0	0	2
Gambling	37	0	3	0	0	34
Grand Larceny	12	2	2	3	0	5
Murder	2	1	0	0	0	1
Misdemeanor	9	7	1	0	0	1
Rape	2	0	1	1	0	0
Robbery	1	1	0	0	0	0
Arson	1	0	0	1	0	0
Enticing female into house of prostitution	2	0	1	0	0	1
Seduction	2	0	0	0	0	2
Kidnaping	1	1	0	0	0	0
Using giant powder for killing fish	3	3	0	0	0	0
Incest	1	0	0	0	0	1
Total	98	30	9	8	0	51

Impeachment accusations filed by grand jury, 9; of which 5 were dismissed and 4 are pending.

	Won.	Lost.	Pending.
Civil Cases	0	0	2

Remarks:—The assault case pending is the Spaulding case now confined in the insane asylum; in one of the grand larceny cases pending the defendant is at large. In the case of enticing a female into a house of prostitution, the facts are these: Robert Stickney brought two girls from Denver to Great Falls and was prosecuted for enticing one of them into a house of prostitution and acquitted, another information was filed against him and dismissed, he was again arrested for kidnaping the other girl and was convicted and is now serving a seven year term in the penitentiary. The gambling cases were brought at the instance of the Law and Order League. Three cases were tried on evidence amply sufficient in my opinion to convict but the jury gave a unanimous verdict for acquittal in each case; every effort possible was made to secure conviction but without avail and under the circumstances it was not deemed best to entail any more expense upon the county in their further prosecution, as it appeared to be impossible to secure a conviction so the balance of the cases were dismissed.

The case of James S. Keel, charged with murder, has been, after being twice tried in Lewis and Clark County, sent to this County for trial. While the two previous cases were dismissed, nevertheless, they were brought at a successful issue for the reason that the dismissals were owing to the intermarriage of the parties. In the murder case that was dismissed, such action was taken only after a thorough investigation by the coroner. The murder case wherein a conviction was secured, was the case of the State v. George Hliboki, convicted of murder in the first degree, it being the first and only instance in the history of criminal trials of the County wherein a verdict of murder in the first degree has been obtained.

The Stickney kidnaping case was appealed to the Supreme Court and the judgment affirmed. The Hliboki murder case is now pending in the Supreme Court. There have been no reversals by the Supreme Court.

Report of Charles N. Pray, County Attorney of the County of Chouteau, Montana, as to cases pending and tried in the District Court, for period of time from Nov. 1, 1902, to Dec. 1, 1904.

Crime	No. of Informations	Convictions	Acquittals	Cases Pending	Defendants at large	Dismissals
Assault	14	7	0	3	0	4
Burglary	14	10	2	1	1	0
Forgery	11	7	0	2	2	0
Gambling	5	5	0	0	0	0
Grand Larceny	25	15	0	4	3	3
Murder	1	5	0	0	2	0
Perjury	2	0	0	1	0	1
Rape	1	1	0	0	0	0
Robbery	1	1	0	0	0	0
Seduction	1	0	0	0	0	1
Altering Brands	1	0	0	0	1	0
Fraudulently obtaining property	2	0	0	2	0	0
Incorrigibility	6	4	0	0	0	2
Petit Larceny, second offence	1	1	0	0	0	0
Total	91	56	2	13	9	11

Report of J. H. Johnston, County Attorney of Custer County, Montana, as to cases pending and tried in District Court for period of time from Nov. 1, 1902, to Dec. 1, 1904.

Crime	No. of Informations	Convictions	Acquittals	Cases Pending	Cases Continued	Dismissals
Assault	4	1	3	0	2	2
Burglary	5	1	2	2	2	1
Forgery	3	4	0	0	0	1
Gambling	0	0	0	0	0	0
Grand Larceny	13	8	5	0	1	4
Murder	1	0	1	0	1	0
Manslaughter	0	0	0	0	0	0
Misdemeanor	0	0	0	0	0	1
Perjury	0	0	0	0	0	0
Rape	0	0	0	0	0	1
Robbery	0	0	0	0	0	0
Violation Game Law	0	0	0	0	0	0
Petit Larceny (Felony) second offence	2	1	0	1	0	0
Obtaining money under false pretenses	1	1	0	0	0	0
Malicious injury to Public Jail (Felony)	1	1	0	0	0	0
Total	30	17	11	3	13	10

	Petition	Discharged	Remanded to Custody
Habeas Corpus	2	1	1
	Won.	Lost.	Pending.
Civil Cases	0	0	1

Remarks:—The column marked "Cases Cont'd" I understood to be for cases contested. If that is not what it is intended for, the column would not be correct as returned.

Report of C. C. Hurley, County Attorney of the County of Dawson, Montana, as to cases pending and tried in District Court for period of time from Nov. 1, 1902, to Dec. 1, 1904.

Crime	No. of Informations	Convictions...	Acquittals	Cases Pending	Cases Continued	Dismissals
	30	14	3	5	2	8

Assault, 5; Burglary, 4; Forgery, 0; Gambling, 0; Grand Larceny, 9; Habeas Corpus, 1; Murder, 5; two convicted 3 now pending; Manslaughter, 0; Misdemeanor, 39, four acquitted; Perjury, 0; Rape, 1, still pending; Robbery, 1, dismissed; Violation Game Law, 0; Crime Against Nature, 1, convicted; Arson 1, convicted; Receiving stolen property, 2, one convicted and one not tried.

	Won	Settled	Lost	Pending
Civil Cases	0	0	1	1

Report of J. J. McCaffery, County Attorney of the County of Deer Lodge, Montana, as to cases pending and tried in District Court for period of time from Nov. 1, 1902, to Dec. 1, 1904.

Crime	No. of Informations . . .	Convictions . . .	Acquittals . . .	Cases Pending	Cases Continued	Dismissals
Assault	7	3	2	0	0	2
Burglary	7	6	1	0	0	0
Forgery	1	0	1	0	0	0
Gambling	0	0	0	0	0	0
Grand Larceny	7	2	4	0	0	1
Habeas Corpus	4	*3	1	0	0	0
Murder	**1	1	0	0	0	0
Manslaughter	0	0	0	0	0	0
Misdemeanor	3	3	0	0	0	0
Perjury	0	0	0	0	0	0
Rape	3	0	0	0	0	***3
Robbery	1	1	0	0	0	0
Violation of Game Law	6	4	0	0	0	2
Incest	1	1	0	0	0	0
Incorrigibility	11	7	4	0	0	0
Extortion	***1	0	0	0	0	0
Total	53	31	13	0	0	8
	Won.		Lost.		Pending.	
Civil Cases	0		0		3	

Remarks:—

* Remanded.

** Convicted of Manslaughter.

*** Hung Juries.

**** Supreme Court Released on Habeas Corpus.

Report of O. W. Belden, County Attorney of the County of Fergus, Montana, as to cases pending and tried in District Court for period of time from Nov. 1, 1902, to Dec. 1, 1904.

Crime	No. of Informa- tions.....	Convictions...	Acquittals....	Cases Pending	Cases Con- tinued.....	Dismissals...
Assault	12	9	2	1	0	0
Burglary	1	5	0	0	0	2
Forgery	2	2	0	0	0	0
Gambling	1	1	0	0	0	0
Grand Larceny	20	12	5	2	0	1
Habeas Corpus	0	0	0	0	0	0
Murder	2	2	0	0	0	0
Manslaughter	0	0	0	0	0	0
Misdemeanor	5	3	2	0	0	0
Perjury	1	1	0	0	0	0
Rape	2	0	0	1	0	1
Robbery	1	1	0	0	0	0
Violation of Game Law	3	3	0	0	0	0
Seduction	1	0	1	0	0	0
Felony	2	2	0	0	0	0
Total	59	41	10	4	0	4

Report of G. H. Grub, County Attorney of the County of Flathead, Montana, as to cases pending and tried in District Court for period of time from November 1, 1902, to December 1, 1904.

Crime	No. of Informa- tions.....	Convictions...	Acquittals....	Cases Pending	Cases Con- tinued.....	Dismissals...
Assault	7	2	1	1	1	2
Burglary	15	7	3	1	0	4
Forgery	4	4	0	0	0	0
Gambling	6	6	0	0	0	0
Grand Larceny	15	6	0	2	2	5
Habeas Corpus	0	0	0	0	0	0
Murder	*5	2	1	1	0	0
Manslaughter	0	0	0	0	0	0
Misdemeanor	4	2	0	0	0	2
Perjury	0	0	0	0	0	0
Rape	1	0	0	1	0	0
Robbery	7	3	0	1	2	1
Violation of Game Law	2	1	0	0	1	0
Accessory to crime of murder	1	0	0	0	0	1
Total	67	33	5	7	6	15
		Won	Lost	Pending	Dismissed	
Civil Cases	1	5	5	2		

Remarks:—* One died while case pending.

Report of Geo. D. Pease, County Attorney of the County of Gallatin, Montana, as to cases pending and tried in District Court for period of time from Nov. 1, 1902, to Dec. 1, 1904.

Crime	No. of Informa- tions	Convictions...	Acquittals	Cases Pending	Cases Con- cluded	Dismissals....
Assault	9	6	0	2	0	1
Burglary	5	2	0	0	0	3
Forgery	1	1	0	0	0	
Gambling	0	0	0	0	0	0
Grand Larceny	8	6	0	0	0	2
Habeas Corpus	0	0	0	0	0	0
Murder	2	1	1	0	0	0
Manslaughter	0	0	0	0	0	0
Misdemeanor	8	6	1	0	1	1
Perjury	0	0	0	0	0	0
Rape	2	2	0	0	0	0
Robbery	0	0	0	0	0	
Violation of Game Law	1	1	0	0	0	0
Wilful inhumanity as an officer	1	0	1	0	0	0
Seduction	1	1	0	0	0	0
Placing obstruction on R. R. tracks	1	0	0	0	0	1
Deserting child	1	1	0	0	0	0
Total	40	27	3	2	0	8
		Won.	Lost.	Pending		
Civil Cases		1	1	1		

Remarks:—The three burglary cases dismissed were on account of the prisoners escaping from the county jail.

Report of D. M. Purfee, County Attorney of Granite County, Montana, as to cases pending and tried in District Court for period of time from Nov. 1, 1902, to Dec. 1, 1904.

Crime	No. of Informa- tions.....	Convictions...	Acquittals....	Cases Pending	Cases Con- tinued.....	Dismissals....
Assault	3	3	0	0	0	1
Burglary	2	1	0	1	0	0
Forgery	0	0	0	0	0	0
Gambling	0	0	0	0	0	0
Grand Larceny	6	3	2	1	0	0
Habeas Corpus	0	0	0	0	0	0
Murder	1	1	0	0	0	0
Manslaughter	0	0	0	0	0	0
Misdemeanor	0	0	0	0	0	0
Perjury	0	0	0	0	0	0
Rape	0	0	0	0	0	0
Robbery	0	0	0	0	0	0
Violation of Game Law	2	1	0	1	0	0
Total	14	8	2	3	0	1
		Won.	Lost.	Pending.		
Civil Cases		0	0	2		

Remarks:—That amount of fines and costs collected, \$1.158.

Report of C. R. Stranahan, County Attorney of the County of Jefferson, Montana, as to cases pending and tried in District Court for period of time from Nov. 1, 1902, to Dec. 1, 1904.

Crime	No. of Informa- tions.....	Convictions...	Acquittals....	Cases Pending	Cases Con- tinued.....	Dismissals....
Assault	2	1	1	0	0	0
Burglary	0	0	0	0	0	0
Forgery	0	0	0	0	0	0
Gambling	0	0	0	0	0	0
Grand Larceny	3	1	0	2	0	0
Habeas Corpus	0	0	0	0	0	0
Murder	0	0	0	0	0	0
Manslaughter	0	0	0	0	0	0
Misdemeanor	33	25	7	1	0	6
Perjury	0	0	0	0	0	0
Rape	1	0	1	0	0	0
Robbery	0	0	0	0	0	0
Violation of Game Law	2	0	2	0	0	0
Total	41	27	11	3	0	6
		Won.	Lost.	Pending.		
Civil Cases		0	0	1		

Report of Lincoln Working, County Attorney of Lewis and Clark County, Montana, as to cases pending and tried in the District Court for the period of time from Jan. 1, 1903, to Dec. 1, 1904.

Crime	No. of Informations.....	Convictions....	Acquittals....	Cases Pending	Cases Continued.....	Dismissals....
Abandonment	2	0	0	0	0	2
Arson	1	1	1	0	0	0
Assault	4	1	0	0	0	3
Burglary	9	7	0	0	0	2
Forgery	2	0	0	0	0	2
Gambling	1	1	0	0	0	0
Grand Larceny	7	2	1	2	0	4
Habeas Corpus	3	1	2	0	0	0
Incorrigibility	5	2	1	0	0	2
Murder	0	1	1	0	0	0
Manslaughter	1	0	1	0	0	0
Mayhem	1	0	0	0	0	1
Neglect of Duty of Peace Officer	1	0	1	0	0	0
Selling Milk Unlawfully	1	1	0	0	0	0
Receiving Stolen Property	3	0	0	0	0	3
Stat. Attempt to Rape	1	0	0	0	0	1
Stat. Rape	3	0	1	0	0	2
Sending Threatening Letters	4	1	0	0	0	3
Taking Away Female	1	0	1	0	0	0
Vagrancy	1	1	0	0	0	0
Violation of Game Law	3	2	0	0	0	1
Total	53	21	10	2	0	26

	Won	Lost	Pending	On Appeal
Suits commenced, 3	3	0	0	0
Suits Defended, 3	1	1	1	1

REMARKS.

Abandonment—State v. Cartlige, defendant made provision for Children, dismissed.

Arson—State v. Green; Information in this cause was filed by my predecessor; defendant was convicted, new trial granted, at the second trial, defendant was found "not guilty."

Assault—State v. Gravelle, one case dismissed.

State v. Hammond (Bearmouth Holdup Case) defendant was taken to Granite County, pleaded "guilty"; sentenced to penitentiary; case dismissed then in this county.

Burglary—State v. Gravelle, defendant charged with burglary and prior conviction, defendant placed on trial, after five days of trial, state's case about closed, defendant holds up guard, shoots guard, breaks out of jail, surrounded by state's witnesses and other citizens, defendant was shot and brought to bay, he then committed suicide; this case was then dismissed. There were two trials in this case, the first resulted in a hung jury.

Forgery—State v. Carpenter, defendant pleaded "guilty" to Petit Larceny.

Grand Larceny—State v. Schroeder, defendant had been tried by my predecessor, hung jury, could get no new testimony, case dismissed.

State v. McAdam, in this case my predecessor in office, filed the information, tried and convicted the defendant, new trial was granted by the court on the ground of insufficient testimony, I therefore dismissed this case.

Murder—State v. Keerl, information filed by my predecessor, case tried by me, conviction, appeal to Supreme Court, new trial granted, retried, hung jury, place of trial changed to Cascade County.

State v. Felker, this case was tried in Silver Bow County, conviction had, appeal to Supreme Court, new trial granted, second trial in Silver Bow County, hung jury, place of trial changed to Lewis and Clarke County, defendant acquitted.

Mayhem—State v. Mulling, defendant not found; case dismissed without prejudice.

Neglect of Duty of Peace Officer—State v. King; information filed; demurrer to information sustained, judgment for defendant; appeal to Supreme Court, judgment sustained.

Selling Milk Unlawfully—State v. McKinney; commenced in Justice's Court, conviction; appeal to District Court, defendant found guilty, appeal to Supreme Court, judgment of District Court affirmed.

Sending Threatening Letters—State v. Gravelle, defendant tried, found guilty; four informations were filed against this defendant; three dismissed.

Vagrancy—State v. Belmont, defendant tried in Justice's Court, found guilty, appeal to District Court, pleaded "guilty."

Violation of Game Law—State v. Brown, tried in Justice's Court, defendant found guilty, appeal to District Court, defendant found guilty; appeal to Supreme Court, reversed.

CIVIL CASES.

Independent Publishing Company v. Lewis and Clark County, suit for the collection of cost of printing briefs for Attorney General's Office; submitted on agreed statement of facts, judgment for county; appeal to Supreme Court, judgment affirmed.

Flowerree Cattle Company v. Treasurer of Lewis and Clark County, et al.; demurrer to complaint, judgment for plaintiff, appeal to Supreme Court, pending on appeal.

State v. Helena Liquor Company; Suit for the collection of personal and license taxes. Suit by attachment; defendant files petition in bankruptcy; state's claim filed before referee; personal tax claim allowed as a priority claim; license tax claim disallowed as priority claim, allowed as a general claim; petition for rehearing, granted, arguments before referee, case re-submitted, referee allows claim as priority claim, claim paid in full.

BIENNIAL REPORT OF THE ATTORNEY GENERAL. 65

Report of M. M. Duncan, County Attorney of the County of Madison, Montana, as to cases pending and tried in the District Court for the period of time from Nov. 1, 1902, to Dec. 1, 1904.

Crime	No. of Informations.....	Convictions.....	Acquittals.....	Cases Pending	Cases Continued.....	Dismissals.....
Assault	4	2	1	1	1	0
Burglary	12	1	0	0	0	1
Forgery	0	0	0	0	0	0
Gambling	9	8	0	0	0	1
Grand Larceny	6	3	3	1	0	0
Habeas Corpus	0	0	0	0	0	0
Murder	2	1	1	0	0	0
Manslaughter	0	0	0	0	0	0
Misdemeanor	0	0	0	0	0	0
Perjury	0	0	0	0	0	0
Rape	0	0	0	0	0	0
Robbery	0	0	0	0	0	0
Violation of Game Law	1	0	1	0	0	0
Total	24	15	5	2	1	2

	Won.	Lost.	Pending.
Civil Cases	0	0	0

Remarks—Two boys were convicted of Grand Larceny under one information, hence the above report on that offence.

Report of Max Waterman, County Attorney of the County of Meagher, Montana, as to cases pending and tried in District Court for period of time from Nov. 1, 1902, to Dec. 1, 1904.

Crime	No. of Informations.....	Convictions.....	Acquittals.....	Cases Pending	Cases Continued.....	Dismissals.....
Assault	1	0	0	1	0	0
Burglary	12	0	0	1	0	1
Forgery	0	0	0	0	0	0
Gambling	0	0	0	0	0	0
Grand Larceny	3	1	1	0	0	1
Habeas Corpus	0	0	0	0	0	0
Murder	0	0	0	0	0	0
Manslaughter	0	0	0	0	0	0
Misdemeanor	0	0	0	0	0	0
Perjury	0	0	0	0	0	0
Rape	1	1	0	0	0	0
Robbery	0	0	0	0	0	0
Violation of Game Law	0	0	0	0	0	0
Incest	1	1	0	0	0	0
Total	8	3	1	2	0	2

	Won.	Lost.	Pending.
Civil Cases	0	0	1

Report of Charles H. Hall, County Attorney of Missoula County, State of Montana, as to cases pending and tried in the District Court for period of time from Nov. 1, 1902, to Dec. 1, 1904.

Crime	No. of Informations.....	Convictions ...	Acquittals	Cases Pending	Cases Continued.	Dismissals.....
Assault	8	5	0	1	0	2
Burglary	6	6	0	0	0	0
Forgery ..	3	2	0	0	0	1
Gambling	1	1	0	0	0	0
Grand Larceny	10	7	0	0	0	3
Murder	9	7	2	0	0	0
Misdemeanor	0	3	0	0	0	0
Robbery	1	1	0	0	0	0
Violation of Game Law	1	0	0	0	0	1
Incorrigibility ..	9	6	1	0	0	2
Obtaining Money, etc.	1	0	1	0	0	0
Total	49	38	4	1	0	9

Remarks—The three convictions of Misdemeanors were not on Information. Cases in which informations are yet to be filed and which will be tried in December, 1904, are:

Robbery. 2; Burglary. 2; Forgery. 2; Assault First Degree, 1.

CIVIL CASES IN DISTRICT COURT.

One case pending. One Tax Case Lost on Demurrer.

CIVIL CASES IN U. S. DISTRICT COURT.

One Tax Case won for County on Demurrer. Four Tax cases now pending.

Report of A. P. Stark, County Attorney of the County of Park, Montana, as to cases pending and tried in District Court for period of time from Nov. 1, 1902, to Dec. 1, 1904.

Crime	No. of Informa- tions	Convicted ...	Acquittals	Cases Pending	Cases Con- tinued	Dismissals
Assault	9	1	2	0	0	0
Burglary ..	9	1	1	1	0	0
Forgery ..	3	3	0	0	0	0
Gambling ..	0	0	0	0	0	0
Grand Larceny	14	9	2	2	0	1
Habeas Corpus	0	0	0	0	0	0
Murder ..	4	2	1	0	0	1
Manslaughter	0	0	0	0	0	0
Misdemeanor ..	2	2	0	0	0	0
Perjury	0	0	0	0	0	0
Rape	0	0	0	0	0	0
Robbery	1	0	0	1	0	0
Violation of Game Law	4	1	0	0	0	3
Mayhem	1	1	0	0	0	0
Sodomy	1	1	0	0	0	0
Destruction of R. R. Bridge	1	0	0	0	0	1
Total	49	33	6	1	0	6

	Won.	Lost.	Pending.
Civil Cases	0	0	1

Report of Orren E. Emerson, County Attorney of the County of Powell, Montana, as to cases pending and tried in District Court for period of time from Nov. 1, 1902, to Dec. 1, 1904.

Crime	No. of Informations	Convictions	Acquittals	Cases Pending	Cases Continued	Dismissals ..
Assault	1	0	0	1	0	12
Burglary	2	2	0	1	0	1
Forgery	0	0	0	0	0	0
Gambling	0	0	0	0	0	0
Grand Larceny	5	12	0	12	0	12
Habeas Corpus	0	0	0	0	0	6
Murder	0	0	0	0	0	0
Manslaughter	0	0	0	0	0	0
Misdemeanor	0	0	0	0	0	1
Perjury	0	0	0	0	0	0
Rape	1	0	0	1	0	0
Robbery	0	0	0	0	0	0
Violation of Game Law	0	0	0	0	0	0
Manning an Animal	2	0	1	1	0	0
Total	11	4	1	6	0	12

	Won.	Lost.	Pending.
Civil Cases	1	0	1

RAVALLI COUNTY.

The report from the county attorney of Ravalli County has not up to this date (Dec. 21, 1904) been received, although numerous requests have been made for same.

Report from Fred L. Gibson (from Nov., 1902 to Sept., 1903) and John C. Lyndes, County Attorney of the County of Rosebud, Montana, as to cases pending and tried in District Court for period of time from Nov. 1, 1902, to Dec. 1, 1904.

Crime	No. of Informations.....	Convictions...	Acquittals.....	Cases Pending	Cases Continued.....	Dismissals.....
Assault	4	1	0	2	0	1
Burglary	3	2	0	0	0	1
Forgery	0	0	0	0	0	0
Gambling	0	0	0	0	0	0
Grand Larceny	8	1	3	0	0	4
Habeas Corpus	0	0	0	0	0	0
Murder	1	0	0	1	0	0
Manslaughter	0	0	0	0	0	0
Misdemeanor	0	0	0	0	0	0
Perjury	0	0	0	0	0	0
Rape	1	1	0	0	0	0
Robbery	0	0	0	0	0	0
Violation of Game Law	2	2	0	0	0	0
Illegal Registration	1	0	0	0	0	1
Total	20	7	3	3	0	7

Remarks—Fred. L. Gibson was County Attorney from Nov. 1, 1902, to Sept. 8, 1903, when he resigned and J. C. Lyndes, Esq., was appointed.

Report of Peter Breen, County Attorney of the County of Silver Bow, Montana, as to cases pending and tried in District Court for period of time from Nov. 1, 1902, to Dec. 1, 1904.

Crime	No. of Informations,.....	Convictions,	Acquittals,.....	Cases Pending	Cases Continued.....	Dismissals,.....
Assault	21	6	2	1	11	1
Burglary	27	14	4	3	0	6
Forgery	6	2	1	*2	0	0
Grand Larceny	37	11	7	8	0	10
Murder	13	4	2	3	0	0
Manslaughter	0	4	0	0	0	0
Misdemeanor	3	2	1	0	0	2
Rape	12	12	0	0	0	0
Robbery	13	6	1	1	2	2
Violation of Game Law	0	0	0	0	0	0
Bribery	3	0	0	0	0	5
Other Felonies	21	4	6	3	3	6
Incorrigibility	13	10	3	0	0	1
Total	150	65	27	21	16	31
		Won.	Lost.	Pending.		
Civil Cases		1	2	3		

Habeas Corpus—Commenced, 52; Withdrawn by Petitioner, 24; Writ Sustained, 12; Remanded to Sheriff, 16.

Indictments—33, and one accusation to remove from office filed and undecided because of Writ of Prohibition in Supreme Court.

* Died before hearing.

BIENNIAL REPORT OF THE ATTORNEY GENERAL. 71

Report of E. M. Hall, County Attorney of the County of Sweet Grass, Montana, as to cases pending and tried in District Court for period of time from Nov. 1, 1902, to Dec. 1, 1904.

Crime	No. of Informations	Convictions	Acquittals	Cases Pending	Cases Continued	Dismissals
Assault	0	0	0	0	0	0
Burglary	2	2	2	0	0	*1
Forgery	12	1	0	1	0	0
Gambling	0	0	0	0	0	0
Grand Larceny	6	3	1	0	0	**2
Habeas Corpus	0	0	0	0	0	0
Murder	0	0	0	0	0	0
Manslaughter	0	0	0	0	0	0
Misdemeanor	1	1	0	0	0	0
Perjury	0	0	0	0	0	0
Rape	1	1	0	0	0	0
Violation of Game Law	0	0	0	0	0	0
Criminal Libel	1	0	0	0	0	***1
Burning Insured Property	1	0	1	0	0	0
Total	17	8	4	1	0	1

	Won.	Lost.	Pending.
Civil Cases	0	0	0

Remarks—* Two defendants charged jointly, one forfeited cash bail; case dismissed against other, want of evidence.

** One case jury failed to agree. One case, the Court at close of States testimony directed the jury to return verdict of not guilty. State appealed, case reversed and new trial ordered, case dismissed by County Attorney as barred by former acquittal.

*** Affidavit filed by Defendant under "fair trial" law, disqualifying Judge, case sent to Gallatin Co., dismissed by County Attorney.

Report of J. E. Erickson, County Attorney of the County of Teton, Montana, as to cases pending and tried in District Court for period of time from Nov. 1, 1902, to Dec. 1, 1904.

GRAND LARCENY.

16 defendants charged, 8 convicted, 7 acquitted and 1 pending.

BURGLARY.

4 defendants charged, 2 convicted and one dismissal, and one acquittal.

RAPE.

1 defendant charged and dismissed for lack of sufficient evidence.

ASSAULT FIRST DEGREE.

1 defendant charged and one conviction.

VIOLATION OF GAME LAW.

1 defendant charged and 1 conviction.

OBSTRUCTING PUBLIC HIGHWAY.

1 defendant charged and 1 conviction.

RECAPITULATION.

24 informations filed. 13 convicted or pleaded guilty, 8 acquittals, two dismissed for lack of evidence and one now pending.

Report of John J. Kerr, County Attorney of the County of Valley, Montana, as to cases pending and tried in District Court for period of time from Nov. 1, 1902, to Dec. 1, 1904.

Crime	No. of Informations.....	Convictions....	Acquittals....	Cases Pending	Cases Continued.....	Dismissals....
Assault	5	2	1	0	0	2
Burglary	5	3	1	0	0	1
Forgery	0	0	0	0	0	0
Gambling	0	0	0	0	0	0
Grand Larceny	15	12	2	0	0	1
Habeas Corpus	2	0	2	0	0	0
Murder	*4	3	0	0	0	1
Manslaughter	0	0	0	0	0	0
Misdemeanor	0	0	0	0	0	0
Perjury	0	0	0	0	0	0
Assault with intent to commit rape	1	0	0	0	0	1
Attempt to rob	3	2	0	0	0	1
Violation of Game Law	0	0	0	0	0	0
Total	35	22	6	0	0	7
Civil Cases	Won.		Lost.		Pending.	
	0		0		1	

Remarks:—* One conviction for manslaughter the information being for murder

Report of Charles L. Harris, County Attorney of the County of Yellowstone, Montana, as to cases pending and tried in District Court for period of time from Nov. 1, 1902, to Dec. 1, 1904.

Crime	No. of Informations	Convictions	Acquittals	Cases Pending	Cases Continued	Dismissals
Assault	9 2H	6 1H	3 1H	0	0	0
Burglary	5	4 1R	0	0	0	1
Forgery	4 2H	2 1H	1	1F 1H	0	0
Gambling	14 7AG	7	0	0	0	7 7AG
Grand Larceny	16 5H	6 1H	3 2H	1F 1H	0	0 1H
Habeas Corpus	0	0	0	0	0	0
Murder	2 1H	0	1 1H	1 1F	0	0
Misdemeanor	1	0	1	0	0	0
Perjury	0	0	0	0	0	0
Rape	0	0	0	0	0	0
Robbery	4 1H	1	0	3 1FH 0	0	0
Violation Game Law	0	0	0	0	0	0
Malicious Mischief	1 1H	1 1H	0	0	0	0
False Pretenses	2 1H	0	2 1H	0	0	0
Assisting Prisoners to Escape	1	0	0	1 1F	0	0
Injuring Public Jail	3	0	0	2 2F	0	1
Total	62	27	11	0	0	15
	Won	Lost	Pending	Compromised		
Civil Cases	5	1	0	1		

Remarks:—H.—Inherited cases. O.—Jumped bail. F.—Fugative from Justice. R.—Reform School sentence.

AG.—Informations filed upon motion of Attorney General, and which were quashed because the motion for leave to file was for gambling, while the informations charged the crime of permitting gambling to be conducted in and about the place of business of defendants. The County Attorney filed new informations upon motion, and obtained conviction in each case.

SCHEDULE G.

Synopsis of opinions rendered by Attorney General from
November 1, 1902, to December 1, 1904.

SCHEDULE G.

Synopsis of Opinions Rendered by Attorney General from November 1, 1902, to December 1, 1904.

W. W. Welch, Superintendent Public Instruction, November 8, 1902.

Text Books—Contracts for—Bond.

The bonds executed by the various text book companies to the State are conditioned for the faithful performance of their contracts. The liability of the bondsmen is to make good any amount of damages which may be ascertained to have been occasioned by breach of such contracts not exceeding the amount stated in the bond, in the event of a failure on the part of their principal to make a settlement.

The facts with reference to alleged violations of text book contracts by text book companies examined and held not to warrant the commencement of legal proceedings.

Under said contracts the State may rescind, after proper notice, for violations of their terms.

John Flaherty, Cold Springs, November 24, 1902.

Legislator—House of Representatives, Member of

Under Section 7, Article V of the Constitution a Fourth Class postmaster is ineligible to serve as a legislator unless he resigns from the former position.

Wm. Hudnall, State Examiner, November 29, 1902

Taxation—Hospital.

The question as to whether a hospital is used or held for private or corporate profit as provided in Section 2, Article XII of the Constitution, and Section 3671 of the Political Code, so as to make it subject to taxation, is to be determined by the test as to whether any individual or corporation in any event would or could participate in any profit which might be realized from its operation. If they could, the hospital should be taxed, if not, it is exempt from taxation.

Charles H. Hall, Co. Atty. Missoula Co., Missoula, December 1, 1902.

Roads, Contracts for—Co. Commrs.—Road Trustees.

Under the Road Act, passed by Seventh Legislative Assembly (Session Laws 1901, p. 18), authority is given road trustees to make contracts for the furnishing of labor, employment and materials for the doing of road work, and all acts and parts of acts in conflict therewith are repealed. A contract made by a Board of County Commissioners for road work is irregular and without authority of law.

James Sulgrove, Co. Atty., Choteau, December 5, 1902.

Supt. Schools—Co. Commrs.—Appointment—Vacancy—Tie Vote—Constitutionality.

An appointment by a Board of County Commissioners to fill a vacancy in a county office cannot be made in anticipation of such vacancy unless the Board as then constituted will be the same when the vacancy actually occurs.

A tie vote for County Superintendent of schools does not create a vacancy in that office in the sense in which the term vacancy is used in subdivision 5 of Article XVI of the Constitution so as to authorize the Board of County Commissioners to fill the office by appointment.

Neither is a tie vote enumerated in Section 1101 Political Code as one of the events upon the happening of which a vacancy occurs. An office cannot be vacant while any person is authorized to act in it and does so act.

In determining the meaning of the word "vacancy" in subdivision 5 of Article XVI, and the intention of the framers of the Constitution in using such word, reference should be had to the definition which the Constitution itself gives, and the construction given to that word by decisions of courts, and by the laws of Montana in force at the time of the adoption of the Constitution.

Section 1171 Political Code, in so far as it provides that a vacancy is created in a county office by reason of a tie vote at an election held for the purpose of electing a successor to the present incumbent of such office, and authorizing the Board of County Commissioners to appoint, as in cases of other vacancies, is unconstitutional, as being in contravention of the provisions of the Constitution that the person having the highest number of votes

shall be declared elected, and that county officers shall hold their offices for two years, and until their successors are elected and qualified.

"Elect" means to select or choose by the public voice or vote, as distinguished from "appoint," which is by an individual.

In case of a tie vote for Superintendent of Schools there is no vacancy in that office, provided the present incumbent is not otherwise disqualified than by such tie vote. The County Commissioners have, therefore, no power to appoint in such case.

Wm. Hudnall, State Examiner, December 6, 1902.

Corporations, Foreign—Banking Corporations—Savings Banks.

A foreign corporation by complying with the laws permitting it to do business in another State thereby subjects itself to all the laws in force in such State, and will not thereafter be heard to question them.

The Constitution, Section 11 of Article XV, provides substantially that foreign corporations shall have no greater rights or privileges than are possessed or enjoyed by domestic corporations.

A foreign corporation doing a trust deposit, security and loaning business, must comply with Section 591 Civil Code; doing a savings bank business, must comply with Sections 621 and 627 Civil Code; doing a general banking business must comply with Section 584 Civil Code.

J. H. Calderhead, State Auditor, December, 9, 1902.

Building & Loan Corporations, Authority of to Transact Business in Montana—Insurance.

A corporation organized for building and loan purposes must comply with the foreign corporation act of 1901 (Session Laws, p. 150) and must in addition comply with the provisions of Senate Bill No. 64, enacted by the Fifth Legislative Assembly (Session Laws 1897, p. 231).

If such a company has a provision in its contracts for the cancellation of indebtedness in case of death of contract holder, it must also comply with the insurance laws. If such insurance feature is eliminated in its operations in Montana, compliance with the insurance laws would then be unnecessary.

State Board of Examiners, December 10, 1902.

Reform School—Reward for Capture of Inmate.

Under Section 3097 Penal Code, the Governor or Acting Governor are authorized to offer a reward for apprehension of an escaped inmate of the State Reform School. Unless a reward has been offered as there provided, a claim for services in apprehending an escaped inmate would not be a proper charge against the State.

W. Hudnall, State Examiner, December 12, 1902.

License—Druggists, Sale of Liquor of.

Section 4065 of the Political code as amended (Session Laws 1897, p. 199) states definitely under what circumstances druggists may sell liquors without a liquor license.

State Board of Examiners, December 15, 1902.

State School of Mines, Board of Trustees of—Mining Law, Lectures on—
State Board of Examiners.

Under Section 1589 of the Political Code, the Board of Trustees of the State School of Mines has authority to contract for a course of lectures on mining law to be delivered at said school.

The questions as to the desirability of having such services performed and the value thereof are within the discretion of said Board, and cannot be reviewed by the State Board of Examiners.

If such a contract is made and properly approved by said Board, the same is a proper charge against the State.

Fred L. Gibson, Co. Atty. Rosebud Co., Forsyth, December 17, 1902.

Sheriff—Co. Commrs.—Appointment—Vacancy—Tie Vote—Constitution
Officers, Provisional.

A tie vote for Sheriff does not create a vacancy in that office such as to warrant an appointment by the Board of County Commissioners, but under subdivision 5, Article XVI of the Constitution, the incumbent of the office is entitled to hold until his successor has been elected and qualified. (See opinion to James Sulgrove, Dec. 5, 1902.)

In the case of a tie vote there is no election. Under the Constitution a person to be declared elected must have received the

highest number of votes for the office for which he was a candidate.

Under Section 6 of Act creating Rosebud county (Session Laws 1901, p. 99) the officers named therein are upon the same footing so far as the creation of vacancies in their respective offices is concerned, as though they had been duly elected to their respective positions.

John A. Matthews, County Attorney, Townsend, Montana, January, 12, 1903.

Jury Commission—Exemption from Jury Service.

Under Section 241, Code of Civil Procedure, the jury commission, in selecting the jury, may safely omit from the list the names of all persons whom they know to be exempt, although a strict interpretation of the law would require such names to be included. There is no reason why the unnecessary expense of summoning such exempt persons should be imposed upon the county in order to comply with a useless technicality, which such strict interpretation would require.

Hon. J. H. Calderhead, State Auditor, Jan. 14, 1903.

Building and Loan Corporations, Authority of to Transact Business in Montana.

A domestic corporation organized for building and loan purposes must comply with the provisions of Senate Bill No. 64, enacted by the Fifth Legislative Assembly (Session Laws of 1897, p. 231). See opinion to Hon. J. H. Calderhead, dated December 9, 1902.

N. N. Davidson, Clerk Board of Examiners, Helena, Montana, January 23, 1903.

Appropriation—Fish and Game Fund.

By House Bill No. 147 (Laws of 1901, page 130) provision is made for a separate fund known as the Fish and Game Fund, which "must be used in defraying the salaries and expenses of the State Game Warden and his Deputies."

A further appropriation is not necessary to make this fund available, and warrants may be drawn against same during the present fiscal year without further legislative action.

Board of County Commissioners of Custer County, Miles City, Montana,
January 28, 1903.

Constitutionality—County Clerk—Deputy,—Legislative Intent.

Section 7 of Senate Bill No. 21, creating Rosebud county, provides for transcribing such parts of the records of Custer County as may be necessary for the use of Rosebud County, and that "said transcripts, when completed, shall be carefully compared with the originals by the County Clerk of said Custer County, who shall be entitled to receive a compensation of five dollars per diem while actually engaged in the performance of such duties."

The duty imposed upon the County Clerk by said section was germane to his office and he is not entitled to compensation for the same, especially in view of the fact that he was provided with an extra deputy during part of the time when he was performing such work.

Such work was not done by the County Clerk in his personal capacity, but in his official capacity, and could have been done equally as well by his deputy.

Subdivisions 26 and 31 of Article V of the Constitution read in part as follows:

"Section 26. The Legislative Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: * * * * creating, increasing or decreasing fees, percentages or allowances of public officers."

"Section 31. Except as otherwise provided in this Constitution, no law shall extend the term of any public officer, or increase or diminish his salary or emolument after his election or appointment. * * * *."

Section 4591, Political Code, reads as follows: ~

"Section 4591. The salaries of all county officers are as prescribed in this chapter. No county officer, except as provided in this chapter, must receive for his own use any fees, penalties or emoluments, for any official service rendered by him, but all fees, penalties and emoluments, of every kind, must be collected by him for the sole use of the county, and are public moneys belonging to the county, and must be accounted for and paid into the County Treasury, as provided in this chapter, and the County Treasurer must place all of such fees in the contingent fund of the county."

Construing the provisions of Senate Bill No. 21 with the above quoted provisions of the Constitution and with Section 4591

clearly shows the legislative intent to have been that the compensation received by the Clerk for comparing and certifying said transcripts should be collected by him for the sole use of the county and paid into the County Treasury.

To construe such provision as authorizing the Clerk to retain said compensation for his own use and benefit would be violative of said sections of the Constitution. Legislative intent to violate the Constitution is never assumed if the language of the statute can be satisfied by a contrary construction.

Hon. J. F. Wegner, Chairman, Board of County Commissioners, Helena Montana, January 29, 1903.

Revenue, Taxation—Choses in Action, Taxation of—Corporations, Taxation of Stock of—Non-Residents, Taxation of Property of—Hospitals, Taxation of Property of—National Banks, Taxation of Securities Belonging to.

1. The property of building and loan corporations doing business in Montana under Senate Bill No. 64, enacted by the Fifth Legislative Assembly (Session Laws of 1897, p. 231) can be taxed only in the manner and to the extent provided in said Act.

2. The shares of stock of domestic corporations are assessable at the domicile of the owner. If stock of a corporation be owned or under control of the corporation itself, it is subject to taxation within this State. But if such stock, though owned by a non-resident of the State, is used in the State as the basis of capitalization of a business carried on herein, or if it be held in the State by an agent of the non-resident owner, the former being permitted to use such stock as the basis of capitalization of a business, or as security for the borrowing of money, then such stock is subject to taxation within this State.

3. Where money is sent into this State by a non-resident and placed in the hands of an agent, trustee or attorney for the purpose of being loaned within the State upon real estate or other securities, the latter being authorized to collect such money and re-loan the same, such debts are subject to taxation within the State.

4. The question as to whether vacant, uninclosed, unoccupied lots belonging to hospitals are taxable is purely a question of fact. Under Section 3671, Political Code, the property of hospitals is exempt from taxation when not used or held for private or corporate profit. But if the hospital has a few vacant lots adjacent

to its hospital buildings that are not improved or not occupied, but are to be eventually used for grounds or improvements connected with the hospital, they would be non-taxable.

5. Bonds (except United States bonds), loans, discounts and investments by banks of depositors' money in excess of their capital stock, surplus and individual profits, are taxable to all banks except national banks. See opinion to Mr. J. H. Murphy, dated June 19, 1901.

6. The property of national banks is subject to taxation only in the manner and to the extent authorized by Section 5219, Revised Statutes of the United States.

A. Conner, Chairman, Committee on Appropriations, Helena, Montana, January 29, 1903.

Sheriff's Fees—Mileage—Penitentiary—State, Claims Against.

Under the decision in the case of *Proctor v. Cascade County*, 20 Mont., 315, Section 2977, Penal Code, making the State liable for actual expenses for transporting prisoners to the penitentiary is superseded by Section 4604, Political Code, to the extent of allowing mileage instead of actual expenses for the transportation of prisoners.

Section 2977 is not repealed, however, so far as it provides that such expenses shall be paid by the State, and the State and not the county is liable for the fees for mileage of Sheriffs for transporting prisoners to the penitentiary.

Max Waterman, County Attorney, White Sulphur Springs, Montana, January, 31, 1903.

Sheriff's Fees—Mileage.

Section 4634, Political Code, is superseded and displaced by Section 4604, Political Code, allowing Sheriffs mileage instead of actual expenses for transporting prisoners before magistrates, under the decision in the case of *Proctor v. Cascade County*, 20 Mont., 315. (See opinion to A. Conner.)

J. H. Calderhead, State Auditor, Helena, Montana, January 31, 1903.

Insurance Association—License—Merger of Insurance Companies.

A merger company formed by a combination of two or more insurance companies already doing business in this State is an insurance association, whether incorporated or not, as defined by

Section 1 of the insurance license law (Session Laws of 1897, page 76), and as such merger company must comply with said license law before doing business in this State.

The writing of policies of insurance by such merger company jointly with one of the companies from which it is merged is a doing of business such as renders it liable for license fees.

C. W. Mahaffay, Helena, Montana, February 4, 1903.

Osteopathic Examiners, State Board of, Fees for Examination by.

In House Bill No. 38, laws of 1901, page 48, there is nothing to require an applicant to take the examination at the first meeting of the Board after making application, and his fee for said examination is not forfeited by his failure to do so.

The applicant should be permitted to take the examination at any meeting within a reasonable time after application, provided that he offer a sufficient excuse to the Board for his delay.

Mr. Charles W. Dempster, Member Judiciary Committee, House of Representatives, Helena, Montana, February 10, 1903.

State Board of Education, Qualification of Members—Constitutionality.

House Bill No. 66 provides that at least five members of the State Board of Education shall be prominent educators actively engaged in school work.

Section 11 of Article XI of the Constitution provides with reference to the State Board of Education that "the other eight members thereof shall be appointed by the Governor, subject to confirmation of the Senate, under the regulations and restrictions to be provided by law."

Section 11 of Article IX of the Constitution, declares that "any person qualified to vote at general elections and for state officers in this State, shall be eligible to any office therein except as otherwise provided in this Constitution."

Held, that House Bill No. 66 would be unconstitutional as being repugnant to the section of the Constitution last above quoted.

The word "restrictions," as used in the phrase "under the restrictions and regulations to be provided by law" was not intended by the framers of the Constitution to authorize the legislature to prescribe additional qualifications for members of the State Board of Education.

C. W. Robison, County Attorney, Beaverhead County, Dillon, Montana,
February 11, 1903.

Road Trustees, Powers of—County Clerk, Duties of—County Commissioners, Powers of—Contracts, of Road Trustees—Same, Void
—Rights Arising Under if Executed—Labor, Performance
of Not Authorized and Not Accepted.

The Road Act of 1901 (Session Laws, p. 24) empowers road trustees and makes it their duty to enter into all contracts for the performance of labor and furnishing of materials necessary in the doing of road work, subject to the limitation of Section 19 of said Act, and gives them supervision and control of the doing of all work in carrying out such contracts.

Warrants in payment for the doing of such work are not to be drawn unless claims therefor be submitted in the manner provided, and unless the officers whose duty it is to draw such warrants are satisfied that the employe or other person making the claim has faithfully performed the services or rendered full value therefor, and further, unless the account has been audited and approved by the Board of County Commissioners.

The functions of the County Clerk in drawing warrants are of a ministerial character and he can exercise no discretion with reference to the claims for which they are drawn.

The power to determine whether a person making the claim has faithfully performed the services or rendered value therefor is given to the Board of County Commissioners in connection with their authority to audit and approve such claims.

Under Section 42 of said road act, no road trustee must be interested directly or indirectly in any contract made by the Board of Road Trustees, and any contract made in violation thereof is null and void. Notwithstanding the invalidity of such a contract, if the road district receives a benefit therefrom, it must pay the fair and reasonable value thereof.

Where work has been performed on roads by the road trustees, without authority from his co-trustees, and the latter have not, while in actual session accepted it, no legal obligation whatever arises against the road district or county therefor.

Mr. A. W. Mahon, State Senator, Helena, Montana, February 11, 1903.

School Election, Notice of.

Under Section 1940, Political Code, it is required that the notice of election shall contain the time and place of holding the election,

the amount of money proposed to be raised, and the purpose or purposes for which it is intended to be used.

A notice which, while containing the other necessary facts, fails to state, except by implication, the purpose or purposes for which the money is intended to be used is defective and the safest and best proceeding in such a case is to call a new election, stating in the notice of election the purpose or purposes for which the money is to be used.

Mr. James M. Self, Chairman, Judiciary Committee, Helena, Montana,
February 13, 1903.

**Taxes Illegally Collected, Refund by State of—Appropriations—Western
Ranches, Limited.**

The Western Ranches, Limited, having obtained a judgment against Custer County for the refund of certain taxes illegally collected by such County, and such judgment having been paid, Custer County has a legal claim against the State for the State's portion of such taxes, and the legislature should make an appropriation to pay the same.

Under Section 3913, Political Code, it is the duty of the State Auditor to draw a warrant for the State's portion of such taxes; but in the above case the money so paid into the Treasury has long since been disbursed and no fund is available out of which such refund may be made.

Sidney Miller, County Clerk, Helena, Montana, February 13, 1903.

Chief of Police—Police officers—Mileage—Traveling Expenses.

In the absence of any provision in the statutes for the payment to police officers of a city of mileage and traveling expenses incurred in traveling outside of their city limits in making an arrest or serving papers on criminals charged with crimes against the State, no legal obligation arises against a county for claims therefor, and such claims should not be allowed by a county.

George E. Davis, Chairman, Board of County Commissioners, Bozeman, Montana, February 18, 1903.

Tax Deed, Notice of Intention to Apply for—Same, Form of When Executed by County—Same, Title Acquired Under—Same, Publication of—Same, What Notice Must Contain— Tax Sale, Fee Upon Redemption Under.

The provisions of Section 3895, Political Code, providing that notices of intention to apply for a tax deed, after expiration of time for redemption, must be served upon the owner of the property purchased, or upon the person occupying the property, if it is occupied, must be strictly followed, said section in all its details being mandatory. The publication of such notice, not being authorized, would not be sufficient.

When the county has become the purchaser of property at a tax sale, and after period of redemption has expired, sells and transfers the same, the deed to be executed should be the same in form as that given by the treasurer when property is sold to individuals, and must recite all the facts stated in Section 3897, Political Code.

If all the proceedings from the assessment and levy of taxes up to and including the sale of the property to the county for delinquent taxes have been legal and regular, the county can convey an absolute title to such property. Such deed would not convey a warranty, but simply convey the county's title.

The notice of intention to apply for a tax deed must contain the title, amount due to date, including all subsequent taxes, interest, penalties and costs.

The fee of \$3.00 provided for in Section 3890, Political Code, must be paid if the property is redeemed.

W. Hudnall, State Examiner, Helena, Montana, February 28, 1903.

State Arid Land Grant Commission—Same, Responsibility of State for Claims Created by—Same, Custodian of Funds of— Board of Examiners—State Treasurer.

Under the Act of Congress known as the Carey land grant, and Acts of the State of Montana accepting the same, no liability created by the State Arid Land Grant Commission is a claim against the State, except in so far as the creation thereof has been expressly authorized by the Legislature. The only liability thus assumed is that provided for in Section 2550D (Session Laws, 1897, p. 192).

The cash realized from a sale of bonds issued under the provisions of said Act of 1897 must be paid to the State Treasurer and paid out by him upon warrants drawn by the Arid Land Grant Commission.

Claims for which warrants are drawn by the Commission are not subject to approval by the State Board of Examiners.

R. W. Berry, County Attorney, Great Falls, Montana, March 5, 1903.

Kidnapping, Act Relating to.

Subdivision 3 of House Bill No. 92 (Session Laws 1901, p. 169) discussed and interpreted.

J. H. Calderhead, State Auditor, Helena, Montana, March 9, 1903.

Officers, Salaries of—Salaries, Appropriation for—Appropriation Act.

An appropriation of \$450.00 for a salary from December 1 to March 1, and an appropriation of \$1,800.00 for salary for fiscal year, including the three months mentioned, of an officer whose salary is by a separate act fixed at \$1,800.00 per year, does not permit of the division of the general appropriation of \$1,800.00 into nine parts for the payment of such officer for the remaining nine months of the fiscal year, but only so much of the latter appropriation can be used for such salary as is necessary to pay said officer the amounts due him under the Act fixing his salary.

Under Section 31, Article V, of the Constitution, no law can increase or diminish the salary or emoluments of any public officer after his election or appointment and the same result cannot be accomplished by an appropriation bill where the office exists independently thereof.

The excess resulting from such appropriation may be used in carrying on the work of the office.

C. L. Harris, County Attorney, Billings, Montana, March 11, 1903.

Railroad Lands, Unsurveyed—Same, Taxation of—Taxes, Collection of—Assessor—Treasurer.

Unsurveyed railroad land, whether owned by the railroad company or not, are non-taxable.

Under the decision in *Life Insurance Company v. Martien*, 71 Pac. 470, the County Treasurer and not the Assessor is the collector of taxes. This means all taxes.

Mr. C. A. Whipple, State Senator, Helena, Montana, March 11, 1903.

Senator—Vacancy.

A person holding the office of Assistant State Land Agent by subsequently accepting the office of State Senator and entering upon the discharge of the duties of that office, vacates his office as such Assistant State Land Agent.

W. W. Welch, Superintendent of Public Instruction, Helena, Montana, March 13, 1903.

Kindergartens—School Funds.

Under House Bill No. 16, Laws of 1899, p. 164, school trustees are authorized to establish and maintain kindergartens and to pay the cost thereof from the school funds of the district. When established the kindergartens are part of the public school system and the trustees are authorized to divide the money between such kindergartens and the other public school as they may deem best.

Mr. A. P. Stark, County Attorney, Livingston, Montana, March 14, 1903.

County Free High School Trustees, Election of—Construction of Statute.

House Bill No. 63 is defective in failing to provide a complete manner of conducting the election of county free high school trustees.

The law should be construed in such a manner as to make it effective if possible, and for this purpose it is suggested that the Boards of School Trustees be notified in all the school districts to provide for an election, and to hold said election, canvass the returns and send them to the County Clerk and Recorder.

Mr. C. L. Harris, County Attorney, Billings, Montana, March 18, 1903.

County Commissioners, Mileage and Per Diem of.

Sections 4222 and 4660, Political Code, are superseded by Section 4590, Political Code, under which County Commissioners are entitled to ten cents a mile for the distance traveled by them in the performance of their duties.

Under Section 4222, Political Code, Commissioners are not entitled to per diem in going to the county seat or returning to their places of residence from the county seat.

Mr. Walter W. Kroger, County Treasurer, Philipsburg, Montana, March 27, 1903.

Licenses—Census.

Section 4003, Political Code, as amended, Laws of 1901, p. 143, does not prescribe how the population of the city, town, village or camp shall be ascertained or determined for the purpose of fixing the amount of license to be collected by the Treasurer. Such population is purely a question of fact which the treasurer must determine from whatever sources of information may be at his disposal, and he is not required to follow any particular census, but may be guided by such census if the same is correct.

If, as a matter of fact, the population of the city is one thousand or more, the license should be \$240.00 semi-annually; but if, as a matter of fact, it contains a population of three hundred to one thousand, then the license should be \$200.00 semi-annually.

Dr. C. B. Miller, Secretary, Board of Managers of Montana Soldiers' Home, Helena, Montana, March 28, 1903.

Statute, When Takes Effect—Approval of Law by Governor.

Section 3 of House Bill No. 15 provides that "this Act shall be in force from and after its passage and approval." The bill was not approved by the Governor, but became a law without his approval under Section 12 of Article VII of the Constitution.

It was the evident intent of the Legislature by Section 3 to fix the time at which the bill should be effective as simultaneous with its becoming a law, and not to make the Governor's approval a condition precedent to its becoming a law.

If Section 3 does not operate to make the law effective immediately upon its becoming a law, then Section 290, Political Code, would be applicable, under which it would be effective on the twentieth day after its passage.

Mr. Max Waterman, County Attorney, White Sulphur Springs, Montana, April, 1, 1903.

Health, County Board of—Disinfection, Expense of.

Under House Bill No. 104, Laws of 1901, p. 80, the expenses incurred by the Board of Health in disinfecting any house, or the articles therein, is chargeable to the householder, unless the owner or occupant is, from poverty or otherwise, unable, in the

opinion of the Health Officer, effectually to perform the work himself.

Section 13 of said bill is simply a general provision requiring the payment by the county of the necessary expenses incurred by the Board of Health, and does not define, or attempt to define, what those necessary expenses shall consist of.

Mr. W. A. Beebe, Clerk of School District No. 9, Heron, Montana, April 2, 1903.

School House, Advertising for Bids for Building.

There is no provision in the school laws requiring the advertising for bids for the erection of a district school house. In the absence of such requirement, it must be held to be unnecessary.

Although not expressly so declared by statute, it is the duty of the Board to let the contract for the building of such school house on the most advantageous terms possible for the district. In order to accomplish this purpose the Board may advertise for bids, if deemed advisable.

W. W. Welch, Superintendent of Public Instruction, Helena, Montana, April 7, 1903.

School District, Indebtedness of Upon Division—School Trustees, Contracts of—Same, Rights Under When Executed Though Void.

Where a school district is divided, the resulting districts becoming the owners, under Section 1754, Political Code, of all permanent property within their boundaries, must likewise assume all debts outstanding which were incurred therefor.

A contract for the erection of a school house, made by the trustees of a district without the authorization of a vote by the district, is void.

If, under the terms of a contract for the erection of a school house, certain material is furnished by the district and certain other material and labor is furnished by the other party to the contract, though the contract is *ultra vires* and void, the latter does not lose the labor and material furnished by him nor does the district lose the material furnished by it. Where such other party has taken possession of the building and moved it out of the district, he is under obligation to the district for the reasonable value of the material furnished by it, but cannot be made to pay more.

Mr. George E. Davis, Chairman, Board of County Commissioners, Bozeman, Montana, April 10, 1903.

Taxes on Personal Property. Collection of—Assessor, Duties of—County Treasurer, Duties of.

After the assessment of a tax upon personal property it is always subject to collection by a levy and seizure until paid. Section 3041 of House Bill No. 299 (Sess. 1903) clothes the Treasurer with a procedure to collect such taxes, and does not prevent him from enforcing collection after November 1, in the manner provided in said Act. Under this view it is immaterial whether Section 3901, Political Code, is repealed by House Bill No. 299.

Sections 3902-3907 and 3944 and 3948, Political Code, are still in effect.

The Assessor must report to the Treasurer all personal property, the taxes assessed against which are not secured by a lien on real estate.

The notice provided for in Section 3941 of House Bill No. 299 may be served upon the taxpayer at the same time that the seizure is made. No time need elapse between the service of notice and the seizure.

If the seizure is made at the time of giving the notice, the costs and expenses mentioned in Section 3904, Political Code, must be collected, and such costs and expenses must in every case be paid by the taxpayer.

If the levy for the current year be in excess of the levy for the prior year, both the property itself and the taxpayer are liable for the excess. The County Treasurer is chargeable only with due diligence in the collection of such excess.

In collecting taxes under the provisions of House Bill No. 299, the Treasurer must also collect special road and special poor taxes, where the taxpayer is subject to same, and also a special school tax.

The computation of taxes of this character upon the basis of the levy for the previous year is for temporary purposes only, and the proper levy for the current year governs as soon as ascertained.

The duties of the County Clerk in extending taxes on the assessment book are not affected by House Bill No. 299. The notations which said Act requires the Assessor and County Treasurer to make are in addition to and independent of the usual work performed on the assessment book by the County Clerk.

J. M. Lewis, Deputy Superintendent of Public Instruction, Helena, Montana, April 10, 1903.

School District, Trustee of—County Free High School, Trustee of—
Offices, Two or More Held by One Person.

In the absence of an express provision of law to the contrary a person may hold more than one public office, if the duties of such offices are not incompatible. No incompatibility exists as to the duties of a trustee of a school and a trustee of a county free high school.

Mr. J. H. Dailey, State Boiler Inspector, Helena, Montana, April 25, 1903.
State Boiler Inspector, Duties of—Boilers, Inspection of—Engineers,
Licensing of—Police Power.

Part III, Title I, Chapter III, Article XIV, Political Code, provides regulations having in view the public safety, and as such constitute an exercise on the part of the State of police power. In the absence of any Federal regulations on the same subject, the State Boiler Inspector has authority to inspect boilers, and license engineers in charge of them, in operation in public buildings of the United States Government.

State Board of Equalization, Helena, Montana, May 1, 1903.

Insurance Companies, Assessment of Net Premiums of.

The net premiums of insurance companies affected by Section 681, Civil Code, should be assessed as heretofore, notwithstanding a recent decision of a district court of this State holding such collection to be unconstitutional, so that such taxes will be in proper shape to collect if said judgment be eventually reversed by the Supreme Court.

Hon. J. K. Toole, Governor, Helena, Montana, May 1, 1903.

Board of Trustees of State Asylum for Deaf, Dumb and Blind, Duties of.

The State having provided an asylum, which is maintained at its expense with facilities for the training of blind children, no authority exists for the Board of Trustees of said Asylum to expend money for the care and education of blind children elsewhere than at such Asylum.

Lincoln Working, County Attorney, Helena, Montana, May 2, 1903.

Taxation—Choses in Action. Taxation of—Certificate of Deposit, Taxation of.

The general rule of law is that the situs of choses in action for the purpose of taxation is at the domicile of the owner and not at the place where the instruments or papers themselves are to be found.

A certificate of deposit in the possession of the clerk of the Supreme Court in lieu of a written undertaking is not taxable in the county at which said clerk has his office when the owner of said certificate does not reside in said county.

Mr. E. M. Hall, County Attorney, Big Timber, Montana, May 4, 1903.

Sheriff, Duties of—Indemnity Bond—Mortgage—Creditor, Attaching.

An indemnity bond should not be taken by a Sheriff from an attaching creditor in lieu of a payment or deposit as required in Section 3809, Civil Code, of the amount due a mortgagee under a mortgage upon the same property prior in point of time to the attachment.

Mr. W. Hudnall, State Examiner, Helena, Montana, May 4, 1903.

Taxation—Penalties.

Under Section 3866 and 4015 of the Political Code a city is not entitled to receive a pro rata of all penalties and interests collected on city and special delinquent taxes by the county.

Mr. W. Hudnall, State Examiner, Helena, Montana, May 6, 1903.

Horticulture, State Board of—Inspectors of Fruit, Fees Collected by.

Under Section 8 of Senate Bill No. 12 (Laws of 1899, p. 36) as amended by House Bill No. 113 (Laws of 1903), all fees charged and collected by special fruit inspectors should be accounted for and turned into the State Treasury, and the claims of such inspectors, after approval by the State Board of Horticulture, should be audited the same as other claims against State funds.

Mr. John J. Kerr, County Attorney, Glasgow, Montana, May 8, 1903.

Free Text Books, Election for.

A failure to hold an election on the first Saturday of April,

1903, upon the question of free text books, as required by Section 12 of Senate Bill No. 54, does not nullify a previous vote upon that question adopting the free text book system, but such system remains in force until it is overthrown by an election held for that purpose.

Mr. C. W. Robison, County Attorney, Dillon, Montana, May 22, 1903.

Bonds, Election for—Ballot, Form of.

The procedure laid down by Section 1962, Political Code, as amended Laws of 1901, p. 125, should be followed in case of special election to vote for school bonds.

In the case of *Tinkel v. Griffin*, 26 Mont., 426, it is held that the form of ballot is not a vital question in determining the validity of an election for voting upon bonds.

Mr. Howard F. Welsh, Coal Mine Inspector, Helena, Montana, May 22, 1903.

Mine, Operating Hoisting Engine in.

Under Substitute for House Bill No. 101 (Chapter LXXXII, Acts of 1903, p. 155) it is unlawful for any person to operate or handle for more than eight hours in twenty-four any hoisting engine used in any mine that is in continuous operation, or that is operated sixteen or more hours in twenty-four of each day, or where said engine develops fifteen or more horsepower, or in any mine where there are fifteen or more men employed underground, for twenty-four hours of each day.

George M. Hays, Secretary of State, Helena, Montana, May 25, 1903.

Incorporation, Filing Articles of—Ministerial, Duties of Secretary of State.

The duty of the Secretary of State, under Section 401, Political Code, to record all articles of incorporation filed in his office is ministerial, as it does not involve the exercise of any discretion or judgment on the part of that officer.

Where there is no question or difference as to the fees, the Secretary of State should file and record articles of incorporation that are not in fact such, even though it may appear that the proposed company is not incorporated under the proper law.

It is not the province of a purely ministerial officer to refuse

to file such articles simply because on the face thereof it may appear that the company might possibly, at some time in the future, violate the law by doing a business under such articles contrary to law.

Mr. F. H. Ray, Assistant State Examiner, Helena, Montana, June 5, 1903.

License, for Carriers—Carriers, License of.

Senate Bill No. 82 (Chapter LVII, Acts 1903, p. 118) provides for a State license for carriers, instead of a county license, as formerly required, and in the absence of a provision to that effect the county is not entitled to retain any portion of this license, but the whole thereof should be turned over to the State Treasurer.

Mr. Will Cave, County Assessor, Missoula County, Missoula, Montana, June 26, 1903.

Taxation, of National Banks—Life Insurance Companies, Taxation of.

The value of United States bonds should not be deducted from the amount of the capital stock and surplus of national banks in order to determine the actual cash value of the stock for assessment purposes.

Under Section 681, Civil Code, the proportion of the excess of premiums over losses for each county should be assessed by the Assessor thereof as other personal property.

Mr. F. H. Ray, Secretary, Carey Land Board, Helena, Montana June 27, 1903.

Carey Land Act Board—Arid Land Grant Commission.

By Chapter CXIV, Acts 1903, p. 211, the Carey Land Act Board is practically shorn of any power, except to carry out the uncompleted contracts of the former State Arid Land Grant Commission, and the only authority of the Board in that regard is contained in Section 2 of the Act. To turn over a partly reclaimed district to a person other than the original contractor would necessitate a new contract, and this is not contemplated by the Act. It was the evident intent of the Legislature to close up the unfinished contracts and then to let the matter of reclaiming the arid lands under the Carey Act remain in *statu quo*.

Mr. W. F. Scott, State Game Warden, Helena, Montana, June 29, 1903.

Mileage, of Constable for Making Arrest.

By Section 4643, Political Code, a Constable is entitled to receive the same mileage as the Sheriff, under the same conditions, for every mile necessarily traveled in executing any warrant, and this mileage is fixed at ten cents by Section 4681, Political Code.

A Constable is entitled to receive this mileage for making an arrest upon a warrant, and it makes no difference whether the arrest was for a violation of the game laws or for any other law of the State.

A Constable is not entitled, however, to receive mileage for unsuccessful trips to make arrests, as it is only for the **execution** of the warrant that he receives mileage.

Mr. W. F. Scott, State Game and Fish Warden, Helena, Montana, July 2, 1903.

Mileage and Fee, of Constable for Making Arrest.

A Constable is entitled to receive \$1.50 for making every arrest in a criminal proceeding, and mileage of ten cents.

Joseph K. Toole, Governor of Montana, Helena, Montana, July 28, 1903.

State Officer, Deputy—Deputy, State Officer.

The duties of a State Officer of a ministerial character may be performed by his deputy, but those of a judicial or discretionary character cannot be so discharged. Chapter LXXXVI (p. 160), Laws 1903, should be construed so as to confer upon the deputies therein provided for authority to perform the duties of their superiors only so far as they pertain to the usual work of their respective offices and are ministerial in their character. Said Act does not authorize such deputies to act, during the absence or disability of their superiors on any of the State Boards.

Joseph K. Toole, Governor of Montana, Helena, Montana, July 8, 1903.

State Treasurer—Treasurer Executive Board State Normal School—
State Normal School Fund.

In Chapter LXXV (p. 147) Laws of 1903, the State Treasurer, and not the Treasurer of the Executive Board of the State Normal School, is made the custodian of the funds derived from the State Normal School bonds, issued in pursuance of the authority thereof.

Mr. C. C. Hurley, County Attorney, Glendive, Montana, July 29, 1903.

Road Tax, Special—Assessor, Duties of—Assessment Lists—Assessment Book.

County Assessors should note in assessment lists the fact of persons being or not being liable for the special road tax provided for in Chapter XLIV, Article III, Section 11 (p. 70) Laws 1903, and such special road tax should also be noted by assessors in the assessment books.

Dr. M. E. Knowles, Secretary, Meat and Milk Inspection Commission, Helena, Montana, August 4, 1903.

Licenses.

Under Section 6 of House Bill No. 126 (Chapter CXX, Laws 1903, p. 226) an inspection license fee should be collected for each of two or more places of business conducted by the same person, as the license is upon the business rather than upon the person who conducts it.

Mr. W. L. Cronk, County Treasurer, Townsend, Montana, August 11, 1903.

Licenses, Collection of From Agent.

Under the license law of this State, licenses are imposed upon each separate and distinct place of business, irrespective of the ownership of the same. Where two businesses are run, one by the agent and the other by his principal, the tax for each place of business should be collected from the principal and not from the agent.

Mr. W. F. Scott, State Game and Fish Warden, Helena, Montana, August 18, 1903.

Mileage and Fees, of State Game Warden and Deputies.

By House Bill No. 147, as amended by Senate Bill No. 131 (Laws 1903, p. 55) it was intended by the Legislature to provide that the State Game and Fish Warden and his deputies should be paid, for their own use and benefit, five cents per mile for every mile actually and necessarily traveled in the performance of their official duties, and the same fees as the Sheriff, or other peace officer, would be entitled to where process is served.

It also provides that the State Game and Fish Warden shall be paid for all actual and necessary traveling expenses, and it appears to have been the intention of the Legislature to make

this in addition to mileage and fees. Why the Legislature should do this is not apparent, but its intention being clear there is no room for construction.

Mr. James M. Lewis, Deputy Superintendent of Schools, Helena, Montana, August 18, 1903.

Text Book Commission, Compensation of State Superintendent and Assistant Superintendent as Member of.

Under Section 14, Senate Bill No. 54 (Laws 1903, p. 281) the State Superintendent of Schools and the Assistant Superintendent of Schools, having been appointed by the Governor as members of the Text Book Commission, are not ex-officio members of that Commission, and the duty of serving upon the Commission was not imposed upon those officers as such by the Legislature, but was a new and additional duty.

Such officers are, therefore, entitled to compensation for serving upon that Commission, notwithstanding that they were at the same time occupying an official position in the State Government.

Mr. William Hudnall, State Examiner, Helena, Montana, August 18, 1903.

Statute of Limitation, as to Licenses.

By Section 524, Code of Civil Procedure, the statute of limitations as to the collection of licenses is two years. The cause of action accrues when the license is due, whether demand is made for it or not, and the statute begins to run as soon as the action accrues.

Mr. Cornelius Hedges, Secretary, Board of Sheep Commissioners, Helena, Montana, August 18, 1903.

Sheep Inspector, Deputy—Sheep, Infected Charge for Care of—Sheep Inspector and Indemnity Fund.

Under Sections 3033 and 3039, Political Code, as amended (Chapter XXIV, Laws of 1903, p. 34), the charge for the care and dipping of infected sheep must be paid by the owner, agent or person in charge of such sheep, and is not a charge against the sheep inspector and indemnity fund.

Mr. D. J. Whaley, Hamilton, Montana, September 5, 1903.

Road Tax, Special, Liability of Crippled Man for.

Under road laws at present in force crippled men are subject to the special road tax provided for in Section 11, Chapter XLIV (p. 70) Laws of 1903.

Mr. J. F. Wegner, Chairman, Board of County Commissioners, Helena, Montana, September 14, 1903.

Licenses, for State Fair Concessions.

The State Fair bill being silent upon that point, those who conduct business of liquor selling upon the State Fair grounds, under concession granted by the directors, or any other business, for the doing of which a license is required by law, must obtain a license from the County Treasurer for the conduct of such business.

Mr. Sydney Sanner, Attorney at Law, Miles City, Montana, September 15, 1903.

Corporations, Extension of Term of Existence of.

Where the term of existence of a corporation was about to expire, and the stockholders met and voted to extend the period for twenty years, under Sections 400, 412 and 562 of the Civil Code, but a certificate of such proceedings was not filed in the office of the County Clerk and Recorder of the county where the original articles of incorporation were filed, or a certified copy thereof filed in the office of the Secretary of State, such corporation became dissolved at the expiration of the period of its existence, under its original articles of incorporation, and having ceased to exist as a corporation could not be revived by thereafter filing such certificate.

Mr. E. M. Hall, County Attorney, Big Timber, Montana September 16, 1903.

Mileage and Fees of Sheriffs, in Civil Cases.

The Sheriff is allowed for levying and serving each writ of attachment or execution on real or personal property, besides mileage, one dollar (Section 4634, Political Code). In cases of garnishment this fee includes the serving both of the copy of the writ and of the notice of garnishment.

In civil cases the Sheriff is entitled to charge ten cents per mile instead of fifteen cents.

Mr. J. Z. Clemm, Clerk of Board of County Commissioners, Virginia City, Montana, September 24, 1903.

County Commissioners, Powers of.

County Commissioners have only such powers and authority as are conferred upon them by law, and would not be authorized to appoint a commission to classify the agricultural lands of the county in the absence of statutory provisions permitting it.

Mr. W. W. Welch, Superintendent of Public Instruction, Helena, Montana, September 25, 1903.

School Trustees, Duties of—County Commissioners, Duties of—Taxes, Levy of for School Purposes.

Section 1940, B, Political Code, in so far as it requires school boards to certify to the County Commissioners the number of mills per dollar which it may be necessary to levy on the taxable property of the district for the maintenance of the schools of such district for the ensuing year, on or before the day designated by law for the Commissioners to levy the requisite taxes for general purposes for such year, is directory only and such School Boards may certify such levy after that date if they have neglected to do so before.

Section 3825, Political Code, is also directory in its provision that the Board of County Commissioners in each county must fix the rate of county taxes and designate the number of mills on each dollar of property for each fund and make the levy upon such taxable property on the second Monday in August, and such duty may be performed by said Board after that time.

Mr. J. H. Calderhead, State Auditor, Helena, Montana, October 12, 1903.

Permanent School Fund—School Income Fund.

The Permanent School Fund cannot be reduced or modified or changed by any act of the Board of Land Commissioners, as this fund must remain inviolate. If a premium is to be paid upon bonds purchased as an investment out of the Permanent School Fund, such premium must be paid out of the School Income Fund.

Mr. W. Hudnall, State Examiner, Helena, Montana, October 15, 1903.

Licenses, Lien for upon property of Bankrupt for.

Property used in any trade, occupation, or profession, for which a license is required is liable for such license and subject to a lien therefor (Sec. 4049, Political Code), and this lien exists as a prior lien against the property of a bankrupt.

Mr. J. E. Erickson, County Attorney, Chouteau, Montana, October 20, 1903.

Classification of County. Change of—Salary, Increase of—Tie Vote. Present Incumbent Holding Over.

A change in the classification of a county neither raises nor lowers the salary of any county officer during the time for which he is elected.

If by reason of a tie vote the present incumbent of an office holds over for an additional two years, his salary remains the same for the whole period of four years, notwithstanding there may be a change in the classification of the county by reason of which his successor would be entitled to an increase in salary.

Mr. George D. Pease, County Attorney, Bozeman, Montana, October 21, 1903.

Justice of the Peace, Fees of.

There is no authority for a Justice of the Peace in a criminal action receiving anything for making a transcript of the docket in case of a preliminary hearing.

A Justice of the Peace is not entitled to charge a fee of one dollar for taking, filing and approving a bail bond, nor is he entitled to any fee for transmitting papers to the District Court, where an examination has been held and the defendant bound over to the District Court. Fees under such circumstances are allowed only for transmitting papers on appeal.

Mr. W. F. Scott, State Game Warden, Helena, Montana, October 29, 1903.

Deputy Game Warden, Appointment of.

Under Section 8 of House Bill No. 147 (Laws 1901) the State Game Warden may appoint eight Special Deputy Game and Fish Wardens. If Special Game Wardens are appointed in addition to such number they cannot be paid any salary.

Mr. W. P. Baker, County Attorney, Hamilton, Montana, October 29, 1903.

Electors, Qualification of to Vote on Local Option Law.

The phrase "the County Commissioners must determine on the sufficiency of the petition presented by the last assessment roll of the county," as contained in Section 3180, Political Code, does not mean that the electors must be property holders, or that they must have any other qualification than as provided for an elector who is authorized to vote for a member of the Legislature. In determining this question the Commissioners may make use of any other means they may desire to adopt in addition to the method pointed out in said section.

Hon. Joseph K. Toole, Governor of Montana, Helena, Montana, November 10, 1903.

Carey Land Act Board—Arid Land Grant Commission.

By Chapter CXIV, Acts of 1903, p. 211, the Carey Land Act Board is practically shorn of any power, except to carry out the uncompleted contracts of the former State Arid Land Grant Commission, and the only authority of the Board in that regard is contained in Section 2 of the Act. It was the evident intent of the Legislature to close up the unfinished contracts and then to let the matter of reclaiming the arid lands under the Carey Act remain in *statu quo*.

Mr. Thomas D. Tuttle, Secretary, State Board of Health, Helena, Montana, November 24, 1903.

County Health Officer, Report of—Misdemeanor.

Wilful failure of County Health Officer to make annual report, as required by Section 16 of House Bill No. 104, Laws of 1901 (p. 84) is punishable as a misdemeanor under Section 299, Penal Code.

Mr. John Byrne, State Mine Inspector, Helena, Montana, December 3, 1903.

Mine Inspector.

Under Sections 582 to 586 of the Political Code, as amended, Laws of 1903, p. 179, it is the duty of the State Mining Inspector to examine placer mines the same as quartz mines where the work is carried on by means of drifts driven in the surface to any extent, and where there is liability of personal injury to men engaged in work by neglect to properly timber the workings.

Mr. J. H. Calderhead, State Auditor, Helena, Montana, December 3, 1903.

Meat and Milk Inspectors, Salaries of—Appropriation.

The provisions of subdivision 1 of Section 2 of the Meat and Milk Inspection Act (Laws 1903, p. 227) making provision for the payment of salaries of Meat and Milk Inspectors monthly out of the General Fund constitutes an appropriation for such salaries and authorizes the State Auditor to issue warrants therefor.

Dr. M. E. Knowles, State Veterinarian, Helena, Montana, December 7, 1903.

Meat and Milk Inspectors, Duties of—License, for Conveying Milk.

A person who sells milk to a dealer who comes to his house for it and who does not himself run any vehicle in selling such milk is not subject to the provisions of Section 15 of the Meat and Milk Inspection Act of 1903 (Laws 1903, p. 232), providing for the collection in counties in which a Meat and Milk Inspector is appointed of a license fee of persons who convey milk or cream in vehicles of any character whatsoever for the purpose of selling it in such counties.

Dr. M. E. Knowles, State Veterinarian, Helena, Montana, December 7, 1903.

Meat and Milk Inspectors, Duties of—License, to Sell Meat, Etc.

Under the provisions of Section 6 of the Meat and Milk Inspection Act of 1903 (Laws 1903, p. 229) farmers or other persons who butcher animals and sell the meat on their premises are not exempt from the payment of the license charge provided for in said Act by the mere fact of not maintaining a market or other place of business in a city or town.

State Board of Examiners, Helena, Montana, December 9, 1903.

Health, Duties of State Board of—Undertakers, Examination of.

Section 3, H. B. No. 104, Seventh Legislative Assembly (Laws 1901, p. 81) authorizes the adoption by the State Board of Health of rules governing the preparation of the remains of those who have died of an infectious disease for transportation and to prescribe an examination to be taken by undertakers.

The members of the State Board of Health are not entitled to receive fees for conducting examinations of undertakers, but are

entitled to the regular per diem while necessarily engaged in such work as well as while engaged in the other work of the Board.

Mr. H. J. Miller, President, Board of Trustees Park County High School, Livingston, Montana, December 12, 1903.

County Free High Schools, Powers of Trustees of.

While all pupils within the county of the prescribed age and attainments are entitled to the benefits of a county free high school, maintained therein, it is within the discretion of the Board of Trustees thereof to enact rules requiring such pupils to enter at such times as regular classes are being formed, or if they wish to enter at other times to require them to show their fitness to take up the work of some one of the existing classes and go on with the other members of such class.

Carey Land Act Board, Helena, Montana, December 15, 1903.

Carey Lands, Water Rights Appurtenant Thereto.

The proviso contained in Section 3545 (Laws 1897, p. 187), that in the case of Carey lands reclaimed "the water rights shall be appurtenant to and inseparable from the lands so selected," precludes the owner of the lands from selling or otherwise disposing of the water rights separately from the land. An attempt by the owner to use the water upon other lands, either permanently or temporarily, would be an evasion and violation of the spirit and letter of said provision.

Mr. Thomas S. Kirk, County Commissioner, Gallatin County, Bozeman, Montana, December 15, 1903.

Assessor, Duties of—County Treasurer, Duties of—Road Tax, Collection of.

By reason of the omission from the Road Act of 1903 (Laws 1903, p. 65) of any provision requiring Assessors to ascertain what taxpayers are liable for the special road tax provided for in Section 11 thereof, and to note the same upon the assessment book before turning it over to the County Clerk, the Assessor cannot be compelled to do such work.

By the provisions of said Road Act the County Treasurers are charged with the duty of collecting the special road tax, and they must collect the same or incur the same liability for a failure

so to do as for a neglect to collect other taxes upon real or personal property.

An Assessor cannot discriminate between taxpayers, assessing some and not others, but must treat all alike.

Mr. R. W. Berry, County Attorney, Great Falls, Montana, November 16, 1903.

Jurisdiction of Justice Courts.

The jurisdiction of a Justice of the Peace extends over the entire county. Section 1591, of the Penal Code, seems to mean that a person making a complaint for a public offense shall make it before the Justice in the township where the offense is committed. That Justice may transfer it to another Justice if he sees fit, or he may try it himself. If there is any disqualification of the Justice in the township where the offense is committed another Justice in the county may hear the case, provided he hears it in his own township.

Mr. George M. Hays, Secretary of State, Helena, Montana, December 17, 1903.

Insurance Companies, Foreign—Foreign Corporation.

Foreign insurance companies are not required to comply with the provisions of the Act of March 9, 1901 (Laws 1901, p. 150), prescribing the conditions upon which foreign corporations generally may do business in this State, but are subject only to the provisions of Chapter I, Title IV, Part IV, Division I (Sections 650-683), Civil Code.

Mr. George M. Hays, Secretary of State, Helena, Montana, December 17, 1903.

Secretary of State, Duties of—State Auditor, Duties of—Foreign Corporations—Insurance Corporations (Foreign).

Foreign insurance corporations are not required to comply with the provisions of the Act of March 9, 1901 (Sess. Laws 1901, p. 150), relating to foreign corporations, but are subject only to the similar provisions of Chapter I, Title IV, Division I, Civil Code, relating to mutual insurance corporations.

Dr. M. E. Knowles, State Veterinarian, Helena, Montana, December 21, 1903.

License.

Under the provisions of Section 15, Chapter CXX (Laws 1903, p. 232), wholesale dealers delivering milk in wholesale quantities in their own vehicles to retail dealers are subject to license for each vehicle used, provided the milk is the product of dairies milking more than five cows.

Mr. George W. Hall, Stock Inspector, Havre, Montana, December 21, 1903.
Stock Inspectors, Powers of—Hides of Slaughtered Animals, Inspection of.

Under Section 1186, Penal Code, butchers who slaughter cattle are given the privilege of exhibiting the hides either at their places of business or residences, so that they cannot be compelled to exhibit such hides at either of said places if they choose the other.

State Board of Examiners, Helena, Montana, December, 26, 1903.

Sheep Inspector and Indemnity Fund, Claims Against—Board of Sheep Commissioners, Powers of.

A judgment for damages recovered against a Deputy Sheep Inspector for improper and negligent conduct in the performance of his official duties is not a legal claim against the Sheep Inspector and Indemnity Fund.

The State Board of Sheep Commissioners is not authorized by existing laws to make a donation of money from the Sheep Inspector and Indemnity Fund to the National Sheep Association.

Dr. M. E. Knowles, State Veterinarian Surgeon, Helena, Montana, December 30, 1903.

Meat and Milk Inspectors, Duties of—License, to Sell Meat, Etc.

The provisions of Section 6 of the Meat and Milk Inspection Act of 1903 (Laws 1903, p. 229) imposing a license upon persons or corporations selling or dealing in fresh meats, fish and poultry in counties in which a Meat and Milk Inspector is appointed, apply only to those regularly engaged in the business of selling meats, etc.

Mr. M. M. Duncan, County Attorney, Virginia City, Montana, December 31, 1903.

Assault in the First Degree.

To constitute an assault of the first degree there must be shown a specific intent to kill.

Mr. A. H. Barrett, State Treasurer, Helena, Montana, January 9, 1904.
State Fair, Secretary and Treasurer to Make Report to State Treasurer.

Under Section 9, of Chapter XCVI, Acts of 1903, it is the duty of the Secretary and Treasurer of the Montana State Fair to include in the account of receipts and expenditures of the institution all sums of money, whether donated to the institution or derived from any other source, and it is the duty of the Treasurer to deposit the same with the State Treasurer within thirty days after the receipt thereof, together with a statement of the sources from whence received.

Mr. W. Hudnall, State Examiner, Helena, Montana, January 9, 1904.

Advertisement of Delinquent Back Taxes—Assessment—Taxes. Advertisement for Delinquent Back.

Under Section 3873, Political Code, it is legal and proper for the County Treasurer, at the proper time in any year, to advertise as delinquent and sell at tax sale any property which has been legally assessed in any year prior thereto, but which, through the carelessness of the County Treasurer, has never been advertised as delinquent and sold according to law. Where the description is so erroneous as to be no description at all, the assessment is void, and such property may be classed as property discovered by the Assessor to have escaped assessment, which may be assessed at any time in accordance with Section 3723, Political Code.

Mr. W. Hudnall, State Examiner, Helena, Montana, January 18, 1904.

Personal Property Taxes, Delinquency of.

Personal property taxes are not delinquent until the 30th day of November at 6 p. m.

Thomas D. Tuttle, M. D., Secretary, State Board of Health, Helena, Montana, January 18, 1904.

Quarantine of Poor Persons—Poor Person, Quarantine of.

If the only support of a person is his own labor, a quarantine preventing him from laboring would be such a misfortune as

would deprive him of his means of support and entitle him to relief from the county under Sections 3200-3203, Political Code, even though he owned property, unless such property was at that time available and sufficient as a means of support.

Mr. W. Hudnall, State Examiner, Helena, Montana, January 18, 1904.

Jurors, Fees for Attendance of When Excused by the Court.

Under Section 4646, as amended, Laws 1899, p. 94, jurors residing within ten miles of the county seat must not receive compensation for any day when the court is not actually in session, or if in session is engaged in the trial of a case in which the juror is not empaneled, or is engaged in other business, and the juror has been temporarily excused from attendance on court. When the juror has been excused by the court he is entitled to compensation for the day on which he appears before the court and is excused, such appearance constituting an attendance before the court.

Mr. W. Hudnall, State Examiner, Helena, Montana, January 18, 1904.

License Tax Upon Telephones—Telephones, License Tax Upon.

Under Section 4071, Political Code, the license tax of seventy-five cents is imposed on each telephone instrument used in purely local business.

That section does not apply to instruments used in interstate business. The use of an instrument once in a year for the purpose of exempting the instrument would not constitute such an interstate use as to relieve such instrument from the payment of the tax.

The burden of proving what instruments are exempt is upon the telephone company, 27 Mont. 394.

Thomas D. Tuttle, M. D., Secretary, State Board of Health, Helena, Montana, January 27, 1904.

Smallpox—School Trustees—State Board of Health.

The State Board of Health has no power to enforce a rule requiring children to be vaccinated before attending public school. Local Boards and School Trustees may do so in case of an epidemic making it necessary. (See opinion to Charles H. Hall, September 5, 1901.)

Hon. Lee Mantle, President, Montana World's Fair Commission, Butte, Montana, January 28, 1904.

World's Fair Commission—State Printing.

The Montana World's Fair Commission is a State board, and the members thereof are State officers. The public printing of such board is, therefore, covered by the contract made by the State Furnishing Board with the Independent Publishing Company for doing the printing for State officers and Boards.

Mr. F. C. Campbell, Superintendent, Fort Shaw Indian School, Fort Shaw, Montana, January 28, 1904.

Reform School, Admission to—Indians, Tribal.

The State courts have no jurisdiction over offenses committed by tribal Indians upon a reservation situated within the State, and such Indians cannot be sent from such a reservation to the State Reform School.

The Board of State Prison Commissioners would have no authority to enter into any arrangement by which such Indians could be cared for at the State Reform School.

Mr. A. H. Barret, State Treasurer, Helena, Montana, January 29, 1904.

County Treasurer—School Fund.

Under Section 1714, Political Code, it is proper for a County Treasurer, upon receiving notice from the State Treasurer of the amount due his county from the State School Fund, to deduct such amount from the amount due the State from such county, provided such County Treasurer has complied with Section 183 of the Session Laws of 1891 (p. 125).

Mr. A. H. Barret, State Treasurer, Helena, Montana, January, 29, 1904.

State Fair Association, Donation by Citizen to.

Where the Treasurer of the State Fair Association receives a donation from a certain citizen, not for the general purposes of the Fair, but for special and limited purposes connected with the Fair and it was kept in a separate fund by such Treasurer and applied to such purposes, the said Treasurer acted as a trustee for such citizen and the money not being a part of the receipts of the State Fair would not be subject to the provisions of the law requiring it to be turned over to the State Treasurer.

Mr. J. A. Morton, Chairman, Board of County Commissioners, Glendive, Montana, January 29, 1904.

Health Officer—Counsel, Employment of—Attorney General, Duties of.

On an appeal to a District Court from the action of a Board of County Commissioners in allowing a claim against their county, the county is not a party to the appeal, but the person whose claim has been allowed is the real party in interest.

The Board of County Commissioners has no authority to employ counsel to represent the county in any legal proceeding to which the county is not a party. Hence, the Board of County Commissioners is not authorized to employ special counsel to defend its action in allowing a claim against the county where an appeal from its action has been taken to the District Court.

The county not being a party to such an appeal, neither the County Attorney or Attorney General can appear in support of the action of the Board of County Commissioners, as, in the event of a decision in favor of the appellant, it would become their duty to see that the money illegally paid out of the county funds was recovered.

Hon. Joseph K. Toole, Governor of Montana, Helena, Montana, February 5, 1904.

Park Commissioners, Board of.

It was the intention of the Legislature by Section 7 of Senate Bill No. 65, Laws 1901, p. 78, to make the said Act a permanent and continuous Act, and that portion of it which requires the appointment of park commissioners before the first day of May, 1901, has only reference to such commissioners as are to be appointed that year.

Mr. Henry Avare, Deputy State Game and Fish Warden, Butte, Montana, February 9, 1904.

Game Laws, Violations of—Extradition.

The hunting of large game in Montana by a non-resident in violation of the statutes requiring non-residents to secure a license therefor, is an extraditable offense.

Mr. W. W. Welch, Superintendent of Public Instruction, Helena, Montana, February 15, 1904.

Age and Schooling Certificates, Examinations for.

By virtue of Sections 1920-1922, Political Code, as amended, Laws 1903 (p. 92), a child between the ages of fourteen and six-

teen years who can read and write legibly the English language, and is regularly employed, cannot be compelled to attend school; but if such a child cannot read and write he must attend school, as provided in Section 1920, until he obtains a certificate from a City Superintendent or Clerk of a School Board that he can read and write the English language. When between those ages such child is not to be required to pass an examination in the other subjects enumerated in Section 1920 in order to secure the certificate mentioned in Section 1922. If such a child is not able to read and write he must not be employed by any person, company or corporation.

Mr. W. W. Welch, Superintendent of Public Instruction, Helena, Montana, February 16, 1904.

School Districts, Consolidation of—School District Property, Disposal of—Boundaries of School District, Change of—Election.

Where it is proposed to consolidate four School Districts, the territory of three of which are contiguous to the fourth or principal district, a convenient method of effecting such consolidation would be to let the three districts be added to the fourth or principal district. Petitions could then be circulated in each of the three districts, containing a request that the district in which the petitions were being circulated be united to the principal district. If it were found that less than a majority of the heads of families had signed in one or more of the districts, the consolidation of the two or three remaining districts would not be affected. No election is required by the statute to determine the question of consolidation or change of boundaries of school districts.

Upon the consolidation of two or more districts, all of the school property of the several districts entering into the consolidation would become the property of the consolidated district, and the disposal of any of it could be effected under the provisions of the statutes with reference to the disposition of property of school districts generally.

Hon. Joseph K. Toole, Governor of Montana, Helena, Montana, February 17, 1904.

Insane Person, Commitment of by Chairman of Board of County Commissioners.

By Section 2300, Political Code, as amended, Laws 1897, p. 163, the Chairman of the Board of County Commissioners is au-

thorized to hear insanity proceedings and make commitments in the absence of the District Judge from the county in which the insane person is arrested. In such a case the fact of the absence of the District Judge from such county should affirmatively appear in the order of commitment made by the Chairman.

Mr. M. M. Duncan, County Attorney, Virginia City, Montana, February 17, 1904.

School Districts, Division of Funds of.

Under Section 1754, Political Code, which provides for the division of school funds between the new district and the old district out of which it is created, the unearned salary of the teacher under contract for a term of months is not an outstanding debt in the sense in which that term is used in said section. Only such portion of the salary as is earned and due at the time of the division should be treated as an outstanding debt in such a case.

Dr. M. E. Knowles, State Veterinarian, Helena, Montana, February 25, 1904.

State Veterinarian—Deputy Sheep Inspector, Residence of—Same, Liability of.

The State Veterinarian should, if possible, appoint a resident of the county in and for which the appointment is made as Deputy Sheep Inspector, as provided in Section 3031, Political Code. If a qualified person cannot be found in the county who will accept the appointment, the State Veterinarian would be authorized to appoint a non-resident, and prosecutions for any resistance to him while in the performance of his duties could be maintained in the same manner as though he were a resident.

A Deputy Inspector must be an ordinarily competent man in the handling and dipping of sheep and while actually dipping sheep must exercise ordinary care and prudence in guarding against and preventing injury to them. If then, through accident, the sheep are injured the Inspector is not liable for any damage the owner may sustain. But if the Inspector fails to exercise such a degree of care as is usually bestowed upon such work by ordinarily competent men, he is guilty of negligence and liable to the owner in damages.

Mr. C. R. Stranahan, County Attorney, Boulder, Montana, February 26, 1904.

Bail Bond—Forfeiture, Disposition of—County Treasurer.

Money collected on a bail bond given in a criminal case should be credited by the County Treasurer to the school fund.

Mr. W. F. Scott, State Game Warden, Helena, Montana, March 2, 1904.

Mileage of Deputy Game Warden, When Witness in Criminal Case.

Under Section 4648, Political Code, a Deputy Game Warden, when attending a criminal trial as a witness under subpoena, is entitled to receive mileage the same as other witnesses, but no per diem.

Mr. J. H. Calderhead, State Auditor, Helena, Montana, March 5, 1904.

License, Refund of by State—Census.

Where a saloon license was paid to the county upon a census returned by official authority, showing the population of the town in which the saloon was located to be one thousand, that census would be the basis on which the license should be collected, and if it was discovered afterwards in another census at a subsequent date that the population was less than a thousand, that fact would not invalidate the license collected under the former census and the State should not refund any part of such license.

Mr. George D. Pease, County Attorney, Bozeman, Montana, March 7, 1904

Road Act—Eminent Domain—Condemnation Proceedings.

The complaint in an action brought under the provisions of Section 64 of the Road Act of 1903 (Laws 1903, p. 84) to condemn land for a public highway should allege in detail the proceedings had before the Board of County Commissioners.

In such an action three Commissioners should be appointed, as provided for in Sections 2220 and 2221, Code of Civil Procedure, to assess the damages sustained by the owner of the land through which the proposed right of way is to pass.

Mr. O. W. Belden, County Attorney, Lewistown, Montana, March 8, 1904.

Trustees of Free County High Schools, Election of

See opinion to A. P. Stark, March 14, 1903.

Mr. E. W. Ray, Assessor of Meagher County, White Sulphur Springs, Montana, March 10, 1904.

Deputy of County Assessor, Allowance of and Salary Fixed by Board of County Commissioners.

Under Section 4602, Political Code, the Assessor of an eighth class county may appoint a deputy for the months of March, April, May, June and July at a salary not to exceed \$100 per month, provided such deputy is necessary for the faithful and prompt discharge of his duties (Sec. 4318, Political Code), but his power in this regard is subject to the supervision of the Board of County Commissioners in the matter of the allowance of the claims for salary of such deputy.

In passing upon such claims the Board will take into consideration the necessity for the appointment of deputy and the benefit to result to the county therefrom, and if the Board is convinced that it is for the best interests of the county and essential to the faithful and prompt discharge of the duties of the Assessor they will undoubtedly allow such deputy.

If the Board should disallow the claim of such deputy their action could be reviewed upon appeal, and would be reversed by the District Court for an abuse of their discretion by refusing to allow a deputy where the necessity for one actually exists as a matter of fact.

Mr. W. Hudnall, State Examiner, Helena, Montana, March 14, 1904.

Corporations.

A foreign corporation, other than a national bank, doing a banking business in this State must comply with the laws of this State relating to such corporation.

Such corporation, having loaned its capital of \$100,000, could not legally withdraw securities for the amount of such loans from its office in Montana and place the same in its office in another state.

A domestic corporation cannot legally transfer all of its business to a foreign corporation or otherwise shift from the Mon-

tana charter to a foreign charter, except by dissolving or winding up its affairs as provided by law.

Mr. W. P. Baker, County Attorney, Hamilton, Montana, March 15, 1904.

Bridge Fund.

County Commissioners are not prohibited from issuing warrants against the Bridge Fund in excess of amount of revenue received in such fund for any particular year.

Mr. George D. Pease, County Attorney, Bozeman, Montana, March 22, 1904.

Taxes, Assessment of—Range Stock, Situs of for Taxation—Assessor, County.

The county in which range stock are located at 12 o'clock m., on the first Monday in March has an exclusive right to assess them for taxation for that year, provided they remain in that county. If such stock be moved into another county before the former county has made a valid assessment of them, the jurisdiction for assessment purposes becomes concurrent in the two counties, and the one which first makes an assessment becomes exclusively entitled to collect the taxes.

The location of range stock and not the residence of the owner determines their situs for the purposes of taxation.

In assessing personal property, the taxes on which are not secured by a lien on real estate, the owner or person in possession or having control of such personal property should be given an opportunity to list such property for taxation before a list thereof is made by the Assessor.

Mr. W. F. O'Leary, Deputy County Attorney, Great Falls, Montana, March 26, 1904.

Women, Right of to Vote for County Free High School—County Free High School.

Women possessing the necessary qualifications are entitled to vote at school elections held for the purpose of submitting to the electors the question of whether a county free high school shall be established.

Mr. John Byrne, State Mine Inspector, Helena, Montana, April 1, 1904.

Deputy State Mine Inspector, Appointment of.

Under Section 581, Political Code (as amended, Laws 1897, p. 109), the Deputy Mine Inspector is at all times subordinate to and under the direction of the Inspector in all matters pertaining to the performance of the duties of the office of such Deputy.

State Board of Examiners, Helena, Montana, April 20, 1904.

Bounty Law, Certificate of Killing of Animals Under.

The certificate of the killing of animals for which a bounty is provided, must, under the bounty law, be made before the Bounty Inspector in the county in which the animals were killed who resides nearest to the place where the animals, or the greater part thereof, were killed, and cannot be made before a Bounty Inspector in another county.

Dr. O. Y. Warren, Superintendent State Insane Asylum, Warm Springs, Montana, April 27, 1904.

Insane Asylum, Screening Windows of Building of.

The screening on the inside by means of a shutter to be locked of the windows of buildings of the insane asylum is not prohibited by a law, but the safety of the inmates of such asylum in case of fire must be guarded in putting in such screens.

Mr. W. W. Welch, Superintendent of Public Instruction, Helena, Montana, April 28, 1904.

School Fund, General—State Fair Grounds, Erection of Educational Building on.

Money cannot lawfully be taken from the General School Fund for the purpose of erecting an educational building on the State Fair Grounds.

Mr. Otto F. Schoenfeld, Secretary Bureau Child and Animal Protection, Helena, Montana, May, 5, 1904.

Penal Code, Construction of Section 472 of.

Section 472, Penal Code, prohibits parents, guardians, etc., from letting out children under the age of 16 years who are under their control for the "vocation, use, occupation, calling, service

or purpose" of singing, playing on musical instruments, etc., "in any public street or highway or in any mendicant or wandering business whatever." This section does not have reference to, or prohibit, a concert or other performance in connection with school work, or any similar training given in a public hall.

Mr. C. H. Martien, County Assessor, Helena, Montana, May 12, 1904.

Assessor, Power of to Subpoena Witnesses.

The County Assessor has power to subpoena and examine any person submitting an assessment list to him, or any other person having knowledge with reference to the property of the taxpayer who submits the list.

Mr. W. Hudnall, State Examiner, Helena, Montana, May 12, 1904.

Fines Imposed in Gambling Cases, Disposition of—School Fund, General.

Under Section 1940A, Political Code (amended Laws 1901, p. 12), in the absence of a statute making special disposition of fines collected in gambling cases such fines go to the General School Fund.

Under Section 2913, *id.*, all fines and forfeitures collected in any court, except police courts, must be first applied to the payment of costs of the case in which the fine is imposed or the forfeiture incurred and only the residue is to be paid to the County Treasurer to be credited to the proper fund.

Mr. N. E. Levengood, County Assessor, Anaconda, Montana, May 12, 1904.

Assessor, Powers of—Books and Invoices, Production of—Witnesses, Subpoenaing of Before Assessor.

Under Section 3704, Political Code, an Assessor has power to subpoena and to examine under oath any taxpayer who submits an assessment list to him, or any other person having knowledge with reference thereto.

In such an examination the Assessor is authorized to require such witness or witnesses to produce any books or papers which will throw light upon the inquiry.

Subpoenas **duces tecum** pointing out just what books or papers the Assessor desires to have produced should be served upon such witnesses.

Mr. C. L. Harris, County Attorney, Billings, Montana, May 13, 1904.

Delinquent Taxes, Sale of Property for—Delinquent Taxes, Interest on.

See opinion to Mr. W. Hudnall, State Examiner, Jan. 9, 1904.

Under Section 3912, Political Code, interest at the rate of one per cent per month must be collected on all taxes not paid on the first Monday in February following the year in which they are due, and such interest runs from the time they were first delinquent until paid. This section applies to taxes which have been due and unpaid for some time against property, which, owing to the negligence of the County Treasurer, has not been sold.

Mr. C. L. Harris, County Attorney, Billings, Montana, May 18, 1904.

Clerk of the District Court, Payment of Salary of When Incumbent Absent From the State.

Where the incumbent of the office of Clerk of the District Court is absent from the State for two or three months no payments can lawfully be made for the salary of such office.

State Board of Examiners, Helena, Montana, May, 23, 1904.

Sheep Inspector and Indemnity Fund—Appropriation.

The law expressly provides that the owners of sheep shall pay for the cost of curing them of scab and other infectious diseases, and those who have charge of caring for infectious diseases among sheep can hold the sheep until the bills for taking care of them have been paid. There is no warrant in the law for paying such claims out of the Sheep Inspector and Indemnity Fund.

The appropriation made by the Legislature for the years 1903 and 1904 cannot be used to pay claims that originated in the year 1901.

Mr. W. Hudnall, State Examiner, Helena, Montana, May 25, 1904.

License of Insurance Agent.

A fire insurance agent who writes insurance only upon property belonging to him, and does not solicit or accept other business, must pay the license required of insurance agents.

Mr. C. L. Harris, County Attorney, Billings, Montana, May 26, 1904.

Vacancy in Office, Jurisdiction of District Court to Declare.

The District Court would not have authority to declare an office vacant because of the failure to put up the bond required, unless the defendant is present in the county and State where service can be had on him.

Mr. C. L. Harris, County Attorney, Billings, Montana, May 26, 1904.

Delinquent Taxes, Advertisement of.

The County Treasurer should wait until the regular time for advertising taxes which have been delinquent for some years.

Where property against which delinquent taxes remain unpaid was at the time of the original delinquency advertised for sale but no sale was made, a readvertisement should be had before a sale.

Where pieces of property stand in the name of the county, having been sold to it by County Treasurers at different periods in years past, but there is no record of the advertisement for sale, a re-advertisement and sale of such property should be made.

Mr. A. H. Barret, State Treasurer, Helena, Montana, May 31, 1904.

State Warrant, Payment by Treasurer of.

If the payee of a State warrant for salary has endorsed the warrant and transferred it to a third party and it is presented by such third party for payment, then the money cannot be garnisheed in the hands of the State Treasurer as against said payee, for the reason that the warrant is a negotiable instrument and must be paid to the holder upon proper endorsement of the same.

Dr. M. E. Knowles, State Veterinarian, Helena, Montana, June 2, 1904.

Inspection of Diseased Meat—Tuberculosis Cattle.

After tuberculosis cattle have been slaughtered by the State Veterinarian the local Meat and Milk Inspector would have a right to inspect the carcasses, and if, upon such examination by him, the meat from such carcasses should be found to be unaffected, and therefore wholesome, the owner could dispose of the meat.

Section 7, of Chapter CXN, Laws 1903, p. 227, does not in terms condemn as unwholesome meat which is slightly affected by tuberculosis, but the question of whether such meat is or is not unwholesome is a technical one to be determined by the Inspector, who is presumed to be an expert qualified to properly decide this question.

Mr. W. W. Welch, State Superintendent of Public Instruction, Helena, Montana, June 3, 1904.

School Trustees, Authority of.

The provisions of Section 1797, Political Code (as amended, Laws 1897, p. 129), are broad enough to authorize the letting of a contract for the construction of a cement walk on or around school property to cost approximately one thousand dollars without submitting the matter to a vote of the district electors, provided, of course, that such improvement is necessary.

However, if the question of providing the necessary funds to pay for such improvement were under consideration a different proposition would be presented, upon which no opinion is expressed.

Mr. J. H. Calderhead, State Auditor, Helena, Montana, June 7, 1904.

Insurance Companies, Paid Up Capital of Foreign Fire.

Section 653, Civil Code, applies to domestic mutual insurance companies.

Section 670, *id.*, which requires every foreign insurance company doing business in this State to have at least \$200,000 paid up capital, prohibits the doing business in this State of a foreign mutual fire insurance company having no capital stock paid in.

State Board of Examiners, Helena, Montana, June 7, 1904.

Bounty Law.

The certificate of a Bounty Inspector of the killing of certain coyotes, etc., which states that the skins of such animals were exhibited to the Bounty Inspector by F, and that F had filed with the Bounty Inspector his affidavit that he killed the animals from which the skins were taken, which directly contradicts the affidavits of P and F as to the killing, which show that the animals were killed by P, is irregular and not in conformity with bounty laws.

Mr. George D. Pease, County Attorney, Bozeman, Montana, June 8, 1904.

Local Option, Withdrawal From Petition for.

If any person who has signed a petition for the submission of the question of local option, under Section 3180, Political Code, desires to withdraw his name from said petition he may do so, provided he notifies the Board of County Commissioners prior to any action being taken by them upon the petition.

Dr. M. E. Knowles, State Veterinarian, Helena, Montana, June 25, 1904.

Meat and Milk Inspector, Powers of as Deputy State Veterinarian—State Veterinarian, Liability of in Slaughtering Tuberculous Cattle.

Meat and Milk Inspectors have authority, under the supervision of the State Veterinarian, to slaughter animals infected with contagious diseases.

If, in slaughtering animals, the State Veterinarian does so in strict conformity to the statutes, and, after a careful examination, uses his best judgment as to the necessity therefor, he is not liable in an action for the killing of the animals.

Mr. John A. Matthews, County Attorney, Townsend, Montana, June 25, 1904.

Road Law.

The making and filing of a plat and field notes is not essential to the validity of the establishment of a road, but it would be better for all purposes to file the same as a matter of record.

Mr. C. L. Harris, County Attorney, Billings, Montana, June 27, 1904.

Bank Stock, Assessment of.

Under Section 3693, Political Code, there should be deducted from the value of the stock to be assessed to the stockholders the assessed value of the real estate owned by the bank, but this real estate should include only such real estate as the bank might legally acquire in the course of its business, and as an incident thereto.

Section 3691, Political Code, requires the verified statement by the Cashier of the bank "to aid the Assessor in determining the value of such shares of stock." This language clearly indicates that it was not intended that such return should be conclusive, but that the Assessor may make use of other aids in de-

termining the value. The published statement of the bank with regard to the capital, surplus and undivided profits would be proper to be consulted in arriving at the true value of the shares of stock.

Mr. W. Hudnall, State Examiner, Helena, Montana, June 30, 1904.

Townsite Deeds, Fees for Making.

Except where a referee is appointed, under Section 5127, Political Code, it is the duty of the Clerk of the Court to prepare the deeds for townsite lots and charge a fee of \$4.00 for making, acknowledging and procuring the signature of Judge, which fee should be paid into the County Treasury.

W. E. Harmon and J. W. Lanning, Members State Text Book Commission, Helena, Montana, July 6, 1904.

Text Book Commission, Compensation of Secretary of—Same, Expenses of—Same, Report of.

The Secretary of the State Text Book Commission is entitled to receive only the six dollars per diem provided for in Section 16 of the Text Book Commission Act of 1903, and the Commission is not authorized to make any further payment to him for his services as such officer.

As the Commission is required to make a report to the Governor any expense actually and necessarily incurred by the Commission in the preparation of the same is a proper charge against the appropriation made in Section 14 of said Act, as are other expenses of the Commission necessarily incurred in carrying out some provision of said Act.

W. E. Harmon and J. W. Lanning, Members Text Book Commission, Helena, Montana, July 6, 1904.

Text Book Commission, Bonds Required of Contractors for the Furnishing of Text Books.

Under the Act of 1903 creating the Text Book Commission no contracts can be entered into with text book companies unless bonds are given by such companies to guarantee the faithful performance of such contracts.

W. E. Harmon and J. W. Lanning, Members Text Book Commission, Helena, Montana, July 6, 1904.

Text Book Commission, Powers of—Contracts for Furnishing Text Books, Violations of.

The State Text Book Commission has nothing to do with the determination of the question as to whether the terms of contracts for the furnishing of text books have been violated and has no power to declare such contracts rescinded because of violations of the provisions thereof, their sole function in this regard being to meet and make new adoptions and approvals of text books and to enter into new contracts for the furnishing of the same to take the place of text books furnished under contracts which have been rescinded.

W. E. Harmon and J. W. Lanning, Members Text Book Commission, Helena, Montana, July 6, 1904.

Text Book Commission, Duties of—High Schools, Adoption of Text Books for.

It is for the Text Book Commission to determine whether or not it is to the best interests of the schools of the State to adopt additional text books from time to time.

The Act of 1903, creating the Text Book Commission, has in view the maintenance of a uniformity of text books not only in the lower school, but through the whole public school system, including high schools.

Dr. M. E. Knowles, State Veterinarian, Helena, Montana, July 13, 1904.

State Veterinarian, Powers of Deputy.

The Deputy State Veterinarian has the same power under the live stock sanitary law as the State Veterinarian.

Dr. Thomas D. Tuttle, Secretary, State Board of Health, Helena, Montana, July 18, 1904.

Health, Duties of State Board of—Vital Statistics, Collection of Information Concerning.

The Secretary of the State Board of Health in collecting information concerning vital statistics is entitled to receive from the County Clerks of the counties of the State certified copies of the entries in their birth and death registers, and being a State officer is not required to pay any fees therefor.

Dr. M. E. Knowles, State Veterinarian, Helena, Montana, July 18, 1904.

Meat and Milk Inspectors, Powers of—Dairies, Unclean.

Under Sections 11, 12 and 13, of the Meat and Milk Inspection Act of 1903, Meat and Milk Inspectors are authorized to prohibit the sale of the product of any dairy which is in such an unsanitary condition as to make the milk coming from it unwholesome.

Notice should be served upon the owners of such dairies to put them in a condition to meet the approval of the Meat and Milk Inspector, and if, after receiving such notice, the dairyman should continue to sell milk before putting his premises in proper condition, then he should be prosecuted under Section 23 of said Act.

Mr. William D. Clark, Chairman, Board of County Commissioners, Butte, Montana, July 28, 1904.

County Commissioners, Duties of.

It is the duty of the County Attorney to take care of all cases in which the county is a party in matters of revenue and taxation, as well as other matters. If the County Attorney fails or refuses to attend to the business, the County Commissioners have power to turn the matter over to the Attorney General or to employ special counsel.

Mr. William D. Clark, Chairman, Board of County Commissioners, Butte, Montana, July 29, 1904.

Banks, Assessment of Private.

Under Section 3695, Political Code, the property of a private bank for the purpose of assessment and taxation, is divided into three classes: 1. Cash items; 2. Credit items; 3. Personal property.

In the assessment of such property the only deductions authorized to be made under said section are as follows: 1. From the amount of cash items, the amount of current deposits; 2. From the amount of credit items, the amount of all accounts payable other than current deposit accounts.

The surplus and undivided profits of a private bank are not assessable as such, but are to be included in the assessment of the property of such bank, either as cash items, as credit items, or as personal property.

In this respect the law with reference to the assessment of private banks differs from the law as to incorporated banks, as, under Section 3091, Political Code, in assessing the property of an incorporated bank, the amount of its surplus or reserve fund is taken into consideration.

The fact that one of the partners of a private bank is a non-resident, does not exempt the firm from taxation of its property or any of it situated in this State.

Method of assessing property of a private bank from list and valuation of its property, as contained in its condensed statement of resources and liabilities, illustrated.

(See opinion to Jesse L. Smith, County Clerk, Carbon county, September 5, 1902.)

Mr. W. W. Welch, Superintendent of Public Instruction, Helena, Montana, August 4, 1904.

Trustees of County Free High School, Duties of.

Where proceedings are pending in which it is sought to enjoin the trustees of a county free high school from levying a tax for the establishment and support of such school for the ensuing year, such trustees are at liberty to take steps to secure the levy of such taxes as though no action were pending, unless the court has issued a temporary restraining order.

Such trustees and any others affected by the injunction proceedings are prohibited from acting, pending a decision thereof, only insofar as they may be restrained therefrom by order of the court.

Mr. Louis Roalswick, County Commissioner, Great Falls, Montana, August 6, 1904.

Bank Stock, Assessment of.

In assessing bank stock the assessable value is the selling value of the stock and not the par value. It is always safe to reckon the value of the stock of any bank at par and then add to its par value the difference between the par value and the selling value above par. If the selling value is less than the par value, then deduct from the par value.

Mr. R. W. Berry, County Attorney, Great Falls, Montana, August 31, 1904.
Constitutional Amendment, Election Proclamation by Governor.

Under Section 1161, Political Code, it is not necessary that the Governor's proclamation shall include the notice of submission of an amendment to the Constitution, as this is covered by the publication of notice required to be made by the Secretary of State, under Section 9, of Article XIX, of the Constitution.

Mr. John A. Matthews, County Attorney, Townsend, Montana, September 3, 1904.

School Superintendent, Discretion of With Reference to Professional and First Grade Certificates of Other Counties—Certificate, Validity of Professional and First Grade in Foreign Countries.

Under Section 1912, Political Code, as amended, Laws 1897, p. 148, a professional or first grade certificate is good in every county in the State, and no discretion is vested in the County Superintendent of Schools in the recognition of certificates from other counties.

Mr. M. M. Duncan, County Attorney, Virginia City, Montana, September 22, 1904.

School Trustees, Authority of to Rent School Houses.

The trustees of a school district have, under Section 1797, Political Code, authority to rent a school house for school purposes and pay the rent therefor out of the school fund of the district when there is no other school house in the district.

Dr. Thomas D. Tuttle, Secretary, State Board of Health, Helena, Montana, September, 23, 1904.

Health, State Board of—Same, County Board of—Sewage, Nuisance From Dumping of in Streams.

The prevention of the dumping of sewage into streams from which water is taken by cities or towns for domestic uses is a matter for the attention of the County Boards of Health, which are authorized to take cognizance of all unhealthy nuisances within the limits of their sanitary jurisdiction.

Mr. J. H. Calderhead, State Auditor, Helena, Montana, September 23, 1904.

Appropriation Bills, Construction of.

Where it appears that an error has been made in the appropriations for salaries of two officers, which salaries are fixed by law, by which the appropriation for one of the officers is \$450 in excess of the amount fixed by law and for the other \$400 short, such appropriation bills will be so construed as to carry out the apparent intention of the Legislature to provide only the proper amount necessary for the salary of each of the officers, for the reason that the Legislature cannot in a general appropriation bill either increase or diminish the salary or emoluments of any office. In order to carry out this intention the Auditor is authorized to draw warrants against the excess appropriated for the one office to make up the deficiency existing in the appropriation for the other.

Mr. C. R. Stranahan, County Attorney, Boulder, Montana, September 29, 1904.

Roads, Width of Public Prescriptive.

The width of a public road acquired by user under the United States statute permitting highways to be laid out on the public domain, and which has never been laid out under the territorial or State statutes with reference to public roads, is the width actually traveled, which would include what is necessary for wagons, carriages and implements to pass each other and for necessary improvements and repairs.

Mr. O. M. Holmes, Deputy State Auditor, Helena, Montana, October 1, 1904.

Insurance Companies—State Auditor.

Prior to 1897 the laws of this State required insurance companies to file their charters in the office of the State Auditor.

Mr. John A. Matthews, County Attorney, Townsend, Montana, October 4, 1904.

Teacher, Revocation of Certificate of—County Superintendent, Powers of—
—Stenographer, Compensation of—Sheriff, Fees of.

The County Superintendent, in determining whether to revoke the certificate of a teacher for any of the causes mentioned in Section 1914, Political Code, is not required to hold a public

hearing of the matter, but may adopt any method that in his judgment will enable him to arrive at a decision which will assure fairness and justice to all concerned.

A notice of a public hearing of charges against a teacher, for the purpose of having this certificate revoked, is not one required by law to be served and the Sheriff is not entitled to either service fee or mileage for serving the same.

There being no provision of law authorizing the employment of a stenographer to attend such a hearing, the expense of having one attend would not be a proper charge against the county.

Mr. George M. Hays, Secretary of State, Helena, Montana, October 12, 1904.

Nomination, Certificate of.

Section 1316, of the Political Code, which provides that a certificate of nomination for a State officer must be filed with the Secretary of State not more than sixty days nor less than thirty days before the election, is directory and not mandatory. Hence any valid certificate filed at any time before the day that the nominations must be certified to the respective counties should be filed by the Secretary of State.

State Board of Examiners, Helena, Montana, October 15, 1904.

State Board, Clerical Service for—State Officers, Clerical Service for.

No claims for clerical services performed for any State officer or Board, as authorized in Section 714, Political Code, can legally be allowed by the State Board of Examiners unless the doing of the work upon which the claim is based was authorized by said Board before such services were performed and the person making the claim employed by said Board.

Mr. A. P. Stark, County Attorney, Livingston, Montana, October 15, 1904.

Registration Districts—Voting Precinct, Removal From.

Although the law seems to contemplate that the voter (except in cities containing 1,000 electors) need register but once in eight years, unless he removes from the registration district, yet where the voter removes from one voting precinct to another voting precinct in the same district, in order to have his name appear in the proper voting precinct, he should take the same steps as he would in the case of a removal from the registration district.

If the boundaries of a voting precinct are changed so that a voter in said precinct, without changing his residence, finds himself in another voting precinct than that in which he is registered, the same rule as above stated would apply.

Mr. N. W. McConnell, Helena, Montana, October 29, 1904.

Military Reservation, Right of Resident on to Vote.

Under Section 1211, Political Code, Subdivision 11, a person who has first acquired a residence in the State and afterwards removes to a military reservation does not lose his right to vote, as he is not a resident of said military reservation within the meaning of said section.

Mr. E. J. Groeneveld, President, State Board of Charities and Reform, Butte, Montana, November 14, 1904.

State Board of Charities and Reforms, Duties and Powers of.

Under Section 744, Political Code, it is the duty of the State Board of Charities and Reform to investigate and supervise the whole system of the charitable and correctional institutions supported by the State or receiving aid from the State Treasury. This imposes the duty upon the Board, and invests it with the power to visit, inspect and report upon the Montana School for the Deaf and Blind at Boulder, as that institution is a charitable institution within the meaning of said section.

Dr. William C. Riddell, Secretary, State Board of Medical Examiners, Helena, Montana, November 16, 1904.

Witnesses Before State Board of Medical Examiners, Mileage and Fees of.

The State Board of Medical Examiners is empowered to subpoena witnesses and compel their attendance at a hearing for the revocation of a certificate to practice medicine.

Such witnesses are entitled to receive attendance fees of \$1.50 per day and mileage at the rate of ten cents per mile, and such mileage and fees must be paid out of the Medical Board Fund.

Mr. C. R. Stranahan, County Attorney, Boulder, Montana, November 18, 1904.

County Commissioners, Election of Under Amendment to the Constitution.

Under the Constitutional amendment adopted in 1902 (Laws 1901, p. 208) the Commissioners elected in the years 1900 and 1902 continue in office until the first Monday of January, 1907, so that there are no County Commissioners to be elected at the general election held in 1904.

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